

ATTACHMENT TO RFTP NO. 99-7005

DEFENSE REUTILIZATION

AND

MARKETING SERVICE

DRAFT INVITATION FOR BIDS

STEP TWO OF TWO - STEP SOLICITATION

**REQUIREMENTS AND CRITERIA
FOR
TECHNICAL PROPOSALS**

SURPLUS INDUSTRIAL PROPERTY
DRAFT INVITATION FOR BIDS

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SURPLUS INDUSTRIAL PROPERTY
DRAFT INVITATION FOR BIDS

I. STEP TWO OF TWO-STEP SEALED BIDDING.

This Invitation For Bids (IFB) is issued to initiate Step Two of two-step sealed bidding. The only bids that the Sales Contracting Officer may consider for award of a contract are those received from bidders that have submitted acceptable technical proposals in Step One of this solicitation under RFTP 99-7005.

II. GENERAL STATEMENTS OF CONTRACT TERMS

Certain of the contents and provisions of Parts III through VIII of this IFB, including Appendices, Attachments and Schedules, are described in general and summary terms in this Part II. Statements in this Part II as to such contents and provisions are not intended to be complete. Reference is made to such contents and provisions for a complete description of the matters involved, and each such statement shall be deemed qualified in its entirety by such reference.

A. Product Pool and Property Flow

Products sold under this IFB are categorized by Federal Supply Classification (FSC). The included FSCs constitute the "Product Pool" and are detailed in Table IV-1 of Part IV below.

The Product Pool represents all FSC codes that are associated with what the DRMS Financial Advisor, Kormendi\Gardner Partners ("KGP"), has termed the "Industrial Products Group." The Industrial Products Group consists of the DRMS equipment, materials and electrical supplies that are similar to the surplus property from private sector industrial settings such as manufacturing, warehousing, shipyards, rail yards, construction, large scale agriculture, laboratories, etc.

Described generally, the Property in the Product Pool is (i) all DRMS items (ii) in the subject FSCs (iii) with DEMIL Code "A" (demilitarization not required), (iv) that become available in the Continental United States, (v) upon completion of the R/T/D process. (Unless otherwise stated, capitalized terms have the meanings set forth in Article 23 of Part VII below. Please refer to Part VII for complete definitions.)

Throughout the five year Performance Period of the contract, DRMS will have the contractual obligation to refer all such Property for purchase under the contract.

The Purchaser will have the exclusive right to purchase all of the flow of Property in the subject FSCs, and once Property has cleared the R/T/D process, DRMS will not be able to divert any such Property to another buyer.

The Purchaser will have the corresponding contractual obligation to purchase all of the flow of Property in the Product Pool. (The Purchaser, however, will also have the right to abandon property after having paid its portion of the Purchase Price. See Part VII, "Additional Terms and Conditions of Sale," Article 3; references to Articles in Part VII are hereinafter abbreviated "Art. ____.")

The flow of Property in the Product Pool has varied between 1985 and 1996. Figures II-1, II-2 and II-3 below present summary data on Acquisition Value, DRMS Gross Proceeds and the DRMS Gross Rate of Return (ROR), respectively, for both DRMS as a whole and for the Product Pool in particular over the period 1985 through 1996. The Acquisition Value of a particular item of Property is a dollar amount assigned by the federal government that is based upon procurement records. Every item of the Property, and every other item in the overall DRMS product line, has an Acquisition Value assigned in this fashion. "DRMS Gross Proceeds" means the gross dollar sales revenues obtained by DRMS upon the sale of particular items in a particular year. "DRMS Gross Rate of Return" (ROR) means DRMS Gross Proceeds divided by the subject items' total Acquisition Value, expressed as a percentage.

These data for the Product Pool are currently preliminary estimates using the best available sources. Revisions to the data will be made available to all interested bidders on a timely basis.

Figure II-4 below presents estimates of "DRMS Net Proceeds" for the Product Pool over the period 1985-1996. "DRMS Net Proceeds" is Gross Proceeds net of DRMS marketing costs. Pool marketing costs are correspondingly estimated by multiplying Gross Proceeds for the Product Pool by the ratio of total DRMS marketing costs to DRMS Gross Proceeds. That ratio is approximately 70% based on historic relationships across all product lines.

B. Contract Period

The Performance Period for the contract is sixty (60) months. (See Art. 2.) During this period the Purchaser will receive for purchase all Property in the Product Pool. The Purchaser will also have six months thereafter to wind-up the disposition of Property and the other affairs of the Purchaser.

DRMS and the Contractor will have an objectively defined early cancellation option discussed in Section J below. (See Art. 2.)

C. Purchaser and Contractor Responsibilities

The Contractor must form a single purpose Subchapter S corporation or Limited Liability company that then becomes the "Purchaser." The Contractor must own at least a fifty-one percent (51%) interest in the Purchaser and must control the Purchaser. (See Art. 1.)

The Purchaser will be the entity that purchases the Property, manages and disposes of the Property, and manages all financial affairs including receipts, payments, accounting systems, cashflow management, audits and cash distributions to the Contractor and DRMS. As provided in Part VIII, the Purchaser

also pays a portion of each DRMS distribution to KGP. (See Art. 16.)

Although the Purchaser is the operational entity, both the Contractor and Purchaser are jointly responsible for the operations of the Purchaser. In particular, while the Contractor does not guarantee the business success of the Purchaser in any way, the Contractor does guarantee that the Purchaser will operate in total compliance with the contract. (See Art. 19.)

The Contractor's guarantee is secured in part by its Payment Deposit of \$500,000 (see Art. 5) and, unless the Contractor posts a "Financial Guarantee Bond" in the amount of \$1 million, by a provision for retaining a portion of the Contractor's distributions in a "Retention Fund" held by DRMS up to a maximum of \$500,000 (see Art. 15).

D. Bid Percentage and Purchase Price

As described in more detail in Part III, Bid Schedule, below, the "Purchase Price" for a particular item of Property will be determined from the Contractor's bid. Described generally, the bid will specify the percentages (the Bid Percentages) that will be multiplied by the Acquisition Value for particular items of Property. As noted above, the Acquisition Value of a particular item of Property is a dollar amount assigned by the federal government and based upon procurement records. Every item of the Property, and every other item in the overall DRMS product line, has an Acquisition Value assigned in this fashion.

There will be five (5) Bid Categories, each of which is comprised of a set of FSCs. These five Bid Categories were chosen as described in detail in Part III, Bid Schedule, below.

E. Bidder Due Diligence

Bidders will be provided detailed historic annual data on DRMS's Acquisition Value, Gross Proceeds, ROR, number of items, and number of units by FSC over the period 1985 - 1996, plus similar data from the first and second quarter of 1997. These data will be included in the final IFB in Part V, Data Appendices.

Bidders will also be provided certain historical DRMS data on Property flow by DRMO, certain quarterly data, data on current DRMS inventory and other relevant data to assist prospective bidders with their due diligence.

Bidders and other members of the general public may inspect the inventory at any DRMO by arrangement with local DRMO management. Moreover, bidders that qualify in Step One of this two-step solicitation will be provided access to all Property in inventory at all DRMOs in the Continental United States for several weeks immediately subsequent to issuance of the IFB.

F. Net Proceeds and Direct Costs

Described generally, the Purchaser's "Net Proceeds" is the Purchaser's Gross Proceeds (obtained by the Purchaser from the Property's sale or rental, buyer's premiums, insurance proceeds or by any other means), less all "Direct Costs." Direct Costs are, generally, all costs, other than the cost of purchasing the Property and the compensation and travel expenses of the Purchaser's Chief Executive Officer, that are actually incurred by the Purchaser solely for the management, preservation, improvement, transportation and disposition of the Property (including all costs commonly termed "overhead costs"), and paid either to a third party or to an affiliate in connection with a "Permitted Affiliate Transaction." (See Art. 9.)

Unless pre-specified as a Permitted Affiliate Transaction (see Art. 9), the costs of any transaction with an "Affiliated

Party" (as such term is defined in Art. 23) will not be considered Direct Costs.

Virtually all of the Purchaser's operating costs will be Direct Costs. Direct costs are directly payable by the Purchaser out of Gross Proceeds and deductible from Gross Proceeds when calculating cash distributions payable to DRMS and the Contractor. (See Section G below and Art. 16.)

G. Operating Account and Distributions

The Contractor is generally required to cause the Purchaser to maintain sufficient cash in the Operating Account to meet the Purchaser's immediate cash needs for the payment of Direct Costs.

(See Art. 13.) Moreover, at the end of each month, the Purchaser must evaluate its ability to make cash distributions. Described generally, on the one hand the Purchaser may not make any distributions unless there is cash on hand in excess of the sum of (i) any amount owed to the Contractor for Direct Cost Advances (the Direct Cost Advance Balance), (ii) its liabilities under Generally Accepted Accounting Principles ("GAAP"), (iii) the "Estimated Contingent Liability Reserve" (defined in Art. 15) and (iv) the expected Direct Costs for the next month. On the other hand, again described generally, the Purchaser *must* distribute *all* of such excess.

The net effect of these cash reserve requirements is that all Net Proceeds will be distributed each month to DRMS and the Contractor except for increases in the cash reserve due to increases in GAAP liabilities, contingent liabilities or provisions for Direct Costs. If the required end of month cash reserve in the Operating Account is reduced due to reductions in GAAP liabilities, contingent liabilities or provisions for Direct Costs, the distributions that month will exceed Net Proceeds for the month by the amount of that reduction in the required cash balance.

See Art. 16 for the complete provisions governing cash distributions.

H. Direct Cost Advances and Repayments

Direct Costs, as noted, are payable directly out of the Purchaser's Gross Proceeds as such are available, or out of the Purchaser's available cash reserves. From time to time, however, and especially during the initial few months of the Performance Period, the Contractor must advance funds to the Purchaser to pay for Direct Costs. These advances are termed "Direct Cost Advances." (See Art 13.)

Direct Cost Advances receive priority repayment directly out of available Gross Proceeds in the following month or months until fully repaid, but without interest thereon.

I. Distributions and Payments

The distribution of Net Proceeds made by the Purchaser to the Contractor is the source of return on the Contractor's investment of capital and expertise in setting up the Purchaser as an operational entity. The distribution of Net Proceeds to DRMS, along with the Purchaser's portion of the Purchase Price, is the source of recovery enhancement for DRMS.

The Purchaser will pay to DRMS the Purchaser's portion of the Purchaser Price to DRMS upon receipt of the Property. (See Art. 5.) The Purchaser's portion of the Purchase Price is twenty percent (20%) of the Purchase Price. The Contractor is responsible for providing the Purchaser with the necessary funds for such purchases ("Purchase Advances," see Art. 14). Note that the Purchaser's portion of the Purchase Price is not a Direct Cost, and as such is borne solely by the Contractor and not by DRMS.

The Purchaser must pay to DRMS eighty percent (80%) of all Net Proceeds (less any required increase in the cash reserve). The Purchaser must pay to Contractor twenty percent (20%) of all Net Proceeds (less any such increase in the cash reserve). (See Art. 16.)

The Contractor thus pays twenty percent (20%) of the Purchase Price and receives 20% of all Net Proceeds. In this

transactional structure, therefore, the Contractor's financial incentives are fully aligned with those of DRMS (and thereby with those of the taxpayers) to maximize the Net Proceeds recovered from the management and disposition of the Property.

J. Early Cancellation Option

Described generally, under this option either party may terminate the contract after fifteen months, upon written notice, if certain performance thresholds are not exceeded. (See Art. 5 and Section 0 of this Part II below.)

The performance threshold of the cancellation option is indexed to decreases in the ROR performance of DRMS for products excluded from the Product Pool. (Note that the DRMS RORs for Pool and non-Pool product have been correlated to a certain extent over the past ten (10) years, thus creating the opportunity for such an indexing mechanism. (See Section K below.)) This indexing mechanism protects the Purchaser against cancellation in the event of a generalized decline in the market value of the Property that is shared by items excluded from the Product Pool.

K. Indexing of Purchase Price

The Purchaser is at risk if the flow of Property in the Product Pool loses market value over time due to reduced quality, reduced demand or other factors not related to the Purchaser's performance. To mitigate this risk, the contract provides for a Purchase Price indexing mechanism as follows. (See Art. 5.)

Since 1985, and particularly since 1989, the ROR achieved by DRMS on Property in the Product Pool has been correlated to a certain extent with its ROR on items excluded from the Product Pool. This correlation, which is visually apparent in Figure II-5, provides an opportunity to index the Purchase Price of Property in the Product Pool to the Gross ROR obtained by DRMS on items excluded from the Product Pool.

The indexing mechanism adjusts the Purchase Price down in proportion to "large" reductions (defined as those in excess of 10%) in Gross ROR that DRMS achieves on all items excluded from the Product Pool relative to the FY 1996 Gross ROR on such items.

The FY 1996 Gross ROR for items not in the Product Pool was 2.20%; if in FY 1998 the corresponding DRMS Gross ROR were 2.09%, there would be no Purchase Price adjustment for FY 1998 (since the reduction is only 5%). If in FY 1999 the corresponding Gross ROR were 1.76%, the Purchase Price for FY 1999 would be adjusted downward by 20% (since the reduction from 2.20% to 1.76% is a 20% reduction).

Note that the indexing reference value -- Gross ROR achieved by DRMS on products not in the Product Pool -- will be calculated for all such items regardless of whether marketed directly by DRMS (as is currently the practice) or marketed through other private sector contractors in proceeds-sharing sale structures or otherwise.

Note also that the indexing mechanism can only adjust the Purchase Price *downward*.

L. Purchase Account

The Purchaser must establish a Purchase Account for funding the Contractor's portion of the Purchase Price. (See Art. 14.) The Contractor must transfer funds to the Purchase Account ("Purchase Advances") in amounts sufficient to enable the Purchaser to pay DRMS for property when payment is due. (See Art. 5 and Art. 14). Moreover, when cash is available for distributions, the Purchaser must transfer Contractor Distributions into the Purchase Account as specified in Art. 14 to minimize the Purchase Advances required from the Contractor.

M. Payment Deposit

The Contractor must pay to DRMS within 10 days of the award of the contract a Payment Deposit (see Art. 5) totaling five hundred thousand dollars (\$500,000) (including the \$100,000 Bid

Deposit required by the provisions of Art. 1.) The Payment Deposit will be held by DRMS throughout the duration of the contract period to secure DRMS claims against the Purchaser and/or Contractor for Material Breaches of the contract, including specifically late payment for Property. If the Purchaser fails to pay for Property when payment is due, DRMS may apply the funds in the Payment Deposit against the late payment and the Purchaser must "cure" this breach by replenishing the Payment Deposit to the level of \$500,000 plus 20% of the amount of the late payment. The \$500,000 amount of the Payment Deposit is estimated to be approximately equal to the Purchaser's portion of the Purchase Price for one average month's flow of Property. At the end of the contract, DRMS will return the Payment Deposit to the Contractor without interest and less the amount necessary to cover its claims, if any, against the Contractor.

N. Retention and Financial Guarantee Bond

To ensure that DRMS is protected against the adverse financial effects of a Material Breach of the contract by either the Purchaser or the Contractor, the Contractor will be required to capitalize a source of security for DRMS claims. To this end, the Contractor will have the option of either providing a Financial Guarantee Bond at the inception of the contract or instituting a Retention Fund. (See Art. 15.)

The Financial Guarantee Bond must be in the amount of \$1 million and issued for at least a full year at a time. DRMS must approve the form of the bond and the issuing surety.

As more completely described in Art. 15, if a Financial Guarantee Bond cannot be obtained or if it is terminated without a replacement, the contract provides for a Retention Fund as follows:

- 1) Once all of the Contractor's Direct Cost Advances have been repaid and the cumulative amount of the Contractor Distributions equals or exceeds the cumulative amount of Purchase Advances - - i.e., once cumulative cashflow to the Contractor is positive -- 10% of each month's

Contractor Distributions will be diverted into a Retention Fund held by DRMS.

- 2) Under most circumstances, the maximum amount in the Retention Fund will be \$500,000; the amount is increased to \$1 million if the Contractor enters insolvency proceedings.
- 3) At the end of the contract, DRMS will return the Retention Fund to the Contractor without interest and less the amount necessary to cover its claims, if any, against the Contractor. The Contractor may obtain the Retention Fund earlier only by providing a \$1 million Financial Guarantee Bond issued for the entirety of the remaining overall contract period and that is otherwise acceptable to DRMS.

0. Cancellation Option Threshold

As discussed in Section J above, both DRMS and the Contractor will have the right to cancel the contract if the Purchaser's performance does not meet a minimum performance threshold over a fifteen (15) month moving average. That threshold is set at a 0.7% Net ROR where Net ROR is defined as Net Proceeds for Property sold during such period divided by its Acquisition Value. The threshold is indexed to the ROR that DRMS achieves on items not in the Pool in a manner similar to the Purchase Price indexing described above in Section K. (See Art. 2.)

P. Pre-Approvals, Authorizations and Operational Control

Full control of all aspects of operations rests with the Purchaser and Contractor. There are no required pre-approvals or authorizations from DRMS. The transaction is a sale transaction and title to the Property passes to the Purchaser upon its removal from a DRMO. (See Art. 1, Art. 3.)

The Purchaser, however, will have to work effectively with DRMO personnel with respect to logistics, and both the Purchaser and the Contractor must interact with DRMS personnel with respect to financial reporting, compliance monitoring and, perhaps, dispute resolution (see Section Q below). Nonetheless, there are no requirements for including DRMS in any way in operational decision-making.

The contract does provide for the Purchaser to fulfill certain requirements with respect to accounting statements (see Art. 8), inventory control and asset tracking procedures (see Art. 8), maintaining adequate insurance coverage (see Art. 11), employee compensation (see Art. 1), returning demilitarization items (see Art. 7), the timing of product removal (see Art. 3), dealing appropriately with hazardous materials (see Art. 7), complying with federal, state and local laws and regulations (see Art. 7), etc. Some of these requirements (such as those related to DEMIL status) are specific to the fact that the Property is generated from military sources. Such requirements notwithstanding, if the Purchaser and Contractor operate within the bounds of the contract, they will have full operational control.

Q. Compliance Monitoring and Dispute Resolution

While full operational control resides with the Purchaser and Contractor, DRMS will have the right under the contract to monitor performance in three ways. First, the Purchaser will be required to have audited financial statements and follow Generally Accepted Accounting Principles. (See Art. 8.) Second, DRMS will have the right to contract for a third-party Compliance Review of the Purchaser's general compliance with the terms of the contract. (See Art. 17.) Third, DRMS may conduct audits of the Purchaser. (See Art. 8.)

DRMS will have the option of conducting Compliance Reviews on a quarterly basis and the expectation should be that DRMS will exercise that option. The focus of a Compliance Review will be less with financial flows, which are the focus of the Purchaser's financial audits, and more on observance of contractual terms

such as those concerned with Affiliate Transactions, Direct Costs, inventory control and asset tracking, revenue tracking, the Purchase Account, cash reserves and the ECLR. (See Art. 17.)

In the event that disputes arise relating to contract compliance, the contract provides for a dispute resolution mechanism. (See Art. 20.) Under this mandatory but non-binding mechanism, a panel of three arbitrators -- one chosen by the Contractor, one chosen by DRMS, and one jointly chosen by the Contractor and DRMS -- will receive the arguments from both sides and resolve the dispute by majority decision. It is anticipated that this mechanism will minimize conflict and reduce the cost of resolving any disagreements that arise.

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III. BID SCHEDULE

A. Background Information

The Property to be sold under this IFB is categorized by Federal Supply Classification (FSC). The FSCs that are included in the Product Pool are detailed in Table IV-1 in Part IV below.

The FSCs presented in Table IV-1 are organized by the "commodity type" labels used internally by DRMS to create groupings of FSCs.

Table IV-2 reorganizes the FSCs in the Product Pool into five (5) Bid Categories -- A through E. The five categories were created by ranking the FSCs by Gross ROR percentages and then grouping them into five categories of approximately equal size based on Gross Proceeds. The structure of the Bid Categories protects the Purchaser from shifts in the composition of the Property flow between FSCs with historically high and low Gross DRMS RORs.

Table IV-2 presents the historic average Gross RORs and other data for the most recent three years for which data are available, 1994-1996. More complete data on Acquisition Value, Gross Proceeds and ROR for the period 1985-1996 will be included in Part V, Data Appendices, of the final IFB and will be available in machine readable form upon request.

Table III-1 below presents a condensed version of Table IV-2 for the five Bid Categories. These data include the estimated relative size of each Bid Category as a percentage of total Acquisition Value in the Product Pool as a whole and as a percentage of Gross Proceeds historically obtained by DRMS for the Product Pool as a whole. Figure III-1 below presents estimates of the Gross ROR for the five Bid Categories over the period 1985-1996.

B. Bid Process

A bid will consist of five (5) Bid Percentages, one applicable to each Bid Category. After the contract is awarded, the Purchase Price for a particular item of Property in a particular FSC code will be determined directly from the applicable Bid Percentage for the Bid Category in which the item's FSC code is listed. The Purchase Price for that item will then be the applicable Bid Percentage multiplied by the item's Acquisition Value.

The winning bid will be determined with reference to a hypothetical Product Pool as follows.

- (1) Table III-2 presents an arbitrary "Bid Schedule Pool" that was constructed by applying the relative percentage weight by Acquisition Value of each of the five Bid Categories from Table III-1 to a hypothetical \$2.0 billion total Acquisition Value.

TABLE III-2 Bi d Schedul e			
Bi d Category	Bi d Schedul e Pool Acquisition Value (millions)	Category % Weight	Bi d Percentages
A	\$45	2.20%	
B	\$90	4.50%	
C	\$165	8.30%	
D	\$480	23.90%	
E	\$1,220	61.10%	
Total	\$2,000	100.00%	

- (2) Table III-2 is identical to the Bid Schedule (Attachment III-2), and the bidder must fill in the Bid

Percentages Column with its five (5) binding Bid Percentages.

- (3) DRMS will then multiply those five Bid Percentages by the respective Bid Schedule Pool Acquisition Values and add the resulting amounts together to determine a "Bid Price" for the Bid Schedule Pool. Table III-3 presents a worksheet for calculating the Bid Price from the Bid Percentages.
- (4) The winning bidder will be determined as that bidder with the highest Bid Price for the Bid Schedule Pool.

Table III-3 Worksheet to Calculate Bid Price				
Column 1	Column 2	Column 3	Column 4	Column 5
Bid Category	Bid Schedule Pool Acquisition Value (millions)	Bid Percentages	Column B * Column D	Bid Price
A	\$45			
B	\$90			
C	\$165			
D	\$480			
E	\$1,220			
Total	\$2,000			
<p>DRMS will calculate the Bid Price as follows:</p> <p>Step 1: Copy the Bid Percentages you entered in Table III-2 to Column 3, Bid Percentages, for each Bid Category, A-E.</p> <p>Step 2: For each Bid Category, multiply the Bid Schedule Pool Acquisition Value in Column 2 by the corresponding Bid Percentage in Column 3. Write the resulting product in Column 4.</p> <p>Step 3: Sum the entries of Column 4 and write the result in the Total row of Column 5. This is the Bid Price that will be used to determine the winning bidder.</p>				

C. Examples

Example 1: Determination of Winning Bid

Bidder A, upon reviewing the historic DRMS data, arrives at its bid taking into account the trends and volatility in the DRMS data, the bidder's expected cost of operations, its expected ability to improve on DRMS performance, its required return to capital and its required profit margin consistent with the risks involved. Accounting for these factors, Bidder A determines that it is willing to bid approximately 25% less than the DRMS Gross ROR for 1994 - 1996 for each Bid Category. Bidder A's Bid Percentages in this example are given in Table III-4.

Bidder B, upon reviewing the same data and taking into account the same factors, determines its Bid Percentages. These are also given in Table III-4 and are higher than Bidder A for Categories A and E but lower for Categories B, C and D.

TABLE III - 4 Example Bid Percentages		
Bid Category	Bidder A Bid Percentages	Bidder B Bid Percentages
A	12.90%	18.75%
B	6.20%	4.50%
C	3.20%	1.50%
D	1.50%	0.90%
E	0.55%	.75%

Computing these two bidders' Bid Prices for the Bid Schedule Pool (calculated as in Table III-3 above) yields the following results:

Bidder A's Bid Price: \$30.6 million

Bidder B's Bid Price: \$28.4 million

Thus, Bidder A is the winning bidder.

Example 2: Determination of Purchase Price

Bidder A is awarded the contract and during the first year of operation the Purchaser formed by Bidder A receives Property with the Acquisition Value by Bid Category shown in Table III-5, column 2. Column 3 of Table III-5 repeats the Bid Percentages of Bidder A's winning bid. Column 4 presents the Purchase Price by Category, obtained by multiplying the Bid Percentage by the Acquisition Value by Category. The Purchase Price for the Pool in Year 1 is thus \$30.0 million, shown at the bottom of column 4.

TABLE III-5 Determination of Purchase Price - Year 1			
Column 1	Column 2	Column 3	Column 4
Bid Category	Year 1 Acquisition Value (millions)	Bid Percentages	Purchase Price
A	\$45	12.90%	\$5.8
B	\$70	6.20%	\$4.3
C	\$155	3.20%	\$5.0
D	\$520	1.50%	\$7.8
E	\$1,290	0.55%	\$7.1
Total	\$2,080		\$30.0

Example 3: Determination of Payments and Distributions

Over the course of Year 1, Bidder A's Purchaser successfully markets all of the property received during the year, obtaining Gross Proceeds that are twice the Purchase Price. Total Direct Costs (generally, the costs of operations not including the payments for the Property) during Year 1 amount to 23.3% of the Purchase Price. [In this example, we do not account for initial start-up lags or general marketing lags so

that all property received in Year 1 is assumed to be sold in Year 1 with no spillover to Year 2.]

Table III-6 presents the calculations of the Payments to DRMS upon delivery of the Property and of cash distributions.

Table III-6

PROCEEDS SHARING SALE TRANSACTION
ILLUSTRATIVE EXAMPLE
YEAR 1

I. Proceeds and Costs - Year 1

A. Gross Proceeds = \$60 Million (= 200% of Purchase Price)

B. Direct Cost = \$7 Million (= 23.3% of Purchase Price)

C. Net Proceeds = \$53 Million

D. Purchase Price = \$30 Million

II. Payments & Distributions - Year 1

A. Purchaser's Payments to DRMS upon delivery = 20% *
Purchase Price
= \$6 Million

B. DRMS Distributions from Purchaser = 80% *
Net Proceeds
= \$42.4 Million

C. Total DRMS Recoveries = Payments upon delivery +
Distributions from Purchaser
= \$48.4 Million

D. Contractor Distributions from Purchaser = 20% of
Net Proceeds
= \$10.6 Million

E. Contractor Profit = Contractor Distributions from
Purchaser
- Payments to DRMS upon delivery
= \$4.6 Million

III. Reconciliation of Year 1 Results

$$\begin{array}{rcll} \text{Total DRMS Recovery} & + & \text{Contractor Profit} & = \text{Total} \\ & & & \text{Net Proceeds} \\ \$48.4 \text{ Million} & + & \$4.6 \text{ Million} & = \$53.0 \\ & & & \text{Million} \end{array}$$

Example 4: Illustrative Financial Model

Tables III-7 and III-8 below present two scenarios for an illustrative financial model of the proposed transaction with key assumptions listed at the beginning of each Table. The model is structured with a Product Pool of \$30 million in DRMS Net Proceeds under what is termed the "DRMS Baseline" (i.e., the approximate 1994-1996 historic DRMS Net Proceeds assuming 30% DRMS "Baseline Expenses" based upon historic relationships). The model also assumes that the size of the Product Pool will decline somewhat over time from \$30 million in DRMS Net Proceeds in Year 1 to \$20 million by Year 5.

Figures used in these tables, and all other forward-looking figures in the IFB, are for illustrative purposes only. DRMS cannot predict the flow of Property to be sold under this contract and DRMS expressly disavows any implication to the contrary. Moreover, historic DRMS operating data are not necessarily reliable indicators of future Property deliveries under this contract, the quality or resale value of such Property or future operating costs. Other than the minimum and maximum quantities specified in Table IV-3 below, DRMS does not make any representation of any character concerning the Property to be sold hereunder.

The scenarios in Tables III-7 and III-8 differ by the assumed proceeds enhancement resulting from the marketing effort of the Purchaser -- 40% enhancement in Table III-7 and 60% in Table III-8. In both scenarios, the Purchase Price is assumed to be equal to DRMS Baseline Net Proceeds. The Purchaser is also assumed to have operating expenses equal to 75% of DRMS Baseline Expenses in both scenarios.

The first panels of both Tables, III-7.a and III-8.a, present a simple one year pro forma that illustrates the main assumptions and the transaction's mechanics. The second panels, III-7.b and III-8.b, present a monthly financial model of the proposed transaction. The assumptions of the monthly model are the same as in the one year pro forma, except as follows. The monthly model incorporates a 3 month lag between receipt and resale of Property. The monthly model also incorporates certain

details of the transactional structure including the Purchase Account, the Payment Deposit and the Retention Fund. The monthly model thus accounts for the working capital required during the start-up phase of the transaction. Under the assumptions of the model the total working capital required is in the range of \$5 million.

Under the assumptions of the monthly model presented in Tables III-7.b and III-8.b, some of the key results include:

1. Required working capital of approximately \$5 million
2. Contractor breakeven by the end of the first year
3. Annual Contractor net cashflows (profits) in Year 2 through Year 5 in the range of \$3 to \$5 million per year
4. Total Contractor profits over the entire contract period in the range of \$17 million to \$24 million

Figures III-1 and III-2 below present the profits to the Contractor for both scenarios (Figure III-1 over the full five year Performance Period (plus several months for the Wind-Up) and Figure III-2 over the first 18 months of the Performance Period).

IV. ITEM DESCRIPTION

It has been determined that the property in the FSC codes presented in Table IV-1, after completion of the R/T/D process, is no longer needed by the Federal Government. Table IV-2 reorganizes the FSCs in the Product Pool into five (5) Bid Categories -- A through E. The five categories were created by ranking the FSCs by historic DRMS Gross ROR percentages and then grouping them into five categories of approximately equal size based on historic DRMS Gross Proceeds.

CONTACT: _____, DRMS- MI A, (616) 961- _____
Various Conditions
DEMIL CODE A
LOCATIONS: (See Loading Legend, Attachment IV.)

TABLE IV- 3	
Minimum Acquisition Value	\$1, 000, 000, 000
Maximum Acquisition Value	\$20, 000, 000, 000

The Data Appendices in Part V present a sales history of the subject FSCs and other related information. Bidders are advised that any sales history information is provided for informational purposes only. Prior year property generations and sales data are not predictors of future generations or sales. Potential bidders can review a listing of our current inventory by accessing the DRMS Internet World Wide Web Site at <http://www.drms.dla.mil>.

V. DATA APPENDICES

(to be provided)

VI. TERMS AND CONDITIONS OF SALE

The following General Information and Instructions and Special Conditions of Sale contained in the Defense Reutilization and Marketing Service pamphlet entitled "Sale by Reference - Instructions, Terms and Conditions Applicable to Department of Defense Personal Property Offered for Sale by Defense Reutilization and Marketing Service, March 1994" (hereinafter, "Sale by Reference"; a copy of the Sale by Reference is included as Attachment VI), are hereby incorporated by reference and become a part of this IFB and any resulting contract:

Part 1: General Information and Instructions (DRMS Form 81, Oct 93): All Conditions, except Condition No. 4.

Part 2: General Sale Terms and Conditions (Standard Form 114C, Jun 86 ed.; and DRMS Form 84, Oct 93): All Conditions, except Condition Nos. 4, 7, 12, 28, 29, 30, 32, and 33.

Part 3: Sale of Government Property, Special Sealed Bid Conditions (DRMS Form 99, Oct 93): All Conditions.

Part 3: Additional Special Sealed Bid Conditions (DRMS Form 99, OCT 93): None.

Part 4: Special Sealed Bid - Term Conditions (Standard Form 114C-2, Jan 70 ed.): All Conditions, except Condition Nos. A, D and E.

Part 5: Additional Special Circumstance Conditions (DRMS Form 86, Oct 93): As follows:

Article B:	Convict Labor
Article C:	Contract Work Hours and Safety Standard Act - Overtime Compensation
Article D:	Liability and Insurance
Article F:	Privacy Act Materials

Part 6: Additional Special Circumstance Conditions - Demilitarization and Mutilation (DRMS Form 95, Oct 93): None.

Part 7: Additional Special Circumstance Conditions - Hazardous and Dangerous Property (DRMS Form 98, Oct 93): As follows:

Article V:	Certified and Non-Certified Radiation Emitting Electronic Products.
Article W:	Radioactive Material

Part 8: Additional Special Circumstance Conditions - Foreign Excess Personal Property (FEPP) (DRMS Form 94, Oct 93): None.

(NOTE: The awardee's technical proposal is incorporated into and becomes part of the contract.)

VII. ADDITIONAL TERMS AND CONDITIONS OF SALE

The following Articles (not part of the Sale By Reference) also apply and constitute terms and conditions of sale.

ARTICLE ONE. BIDDING AND CONTRACT AWARD

Section 1. Bid Deposit. Each bid must be accompanied by a refundable Bid Deposit in the form of a bank check, payable to "Defense Reutilization and Marketing Service," in the amount of one-hundred thousand dollars (\$100,000.00).

Section 2. Bid Evaluation. Award will be made to the responsive, responsible bidder that has submitted the highest Purchase Price determined by applying the bidder's Bid Percentages to the Acquisition Values reported in Table III-2 above. The Government reserves the right not to award a contract if such contract is deemed not to be in the Government's best interest. No negative Bid Percentages are allowed.

Section 3. Contract Award. The accepted technical proposal will be incorporated into, and made part of, the resultant contract. Prior to award of the contract, the Sales Contracting Officer will determine whether the potential Contractor is a responsible prospective Contractor.

Section 4. Post-Award Conference. The Government reserves the right to conduct a post-award conference to ensure that Contractor understands the terms and conditions of the contract. The location and date of the conference will be determined by the Government and the costs incurred by personnel affiliated with Contractor and/or Purchaser to attend shall be Indirect Costs, paid by Contractor without reimbursement by DRMS or Purchaser.

Section 5. Purchaser Information. Within fifteen (15) Days of the date of award, Contractor shall provide the following to DRMS (collectively, the "Purchaser Information"), and Purchaser shall provide to DRMS updated Purchaser Information within ten (10) Days of any change thereto:

(A) Notice to DRMS of Purchaser's complete legal name, type of business organization (corporation or limited liability company), place of formation (i.e., Delaware), Federal Employer Identification Number, and Principal Place of Business.

(B) Copies to DRMS of all documents evidencing: (i) Purchaser's legal formation and internal governance; (ii) if Purchaser is a corporation, Purchaser's election of Subchapter S status for federal income tax purposes; and (iii) appointment of Purchaser's Registered Agent.

(C) Notice to DRMS of Purchaser's Operating Account and Purchase Account, including the name, address and telephone contact information of the bank(s) of deposit, account numbers, and identification of the signatories on the accounts.

(D) Copies of all documents evidencing the opening of the Operating and Purchase Accounts, including without limitation copies of the signature card(s), resolutions and instructions to the bank.

Section 6. Formation of Purchaser; Covenant of Contractor.

(A) **Formation of Purchaser.** Upon award of the contract to Contractor, Contractor shall cause the formation of a single purpose Subchapter S corporation or limited liability company (the "Purchaser"), over which Contractor has control and in which Contractor has at least a majority (51%) ownership interest, to perform the contract as provided herein.

(B) **Covenant of Contractor.** Contractor hereby covenants and agrees that, from and after the date of award and until completion of the Wind-Up, Purchaser will remain a single purpose Subchapter S corporation or limited liability company, the sole purpose of which is to perform this contract, and which will not form or acquire any subsidiary business entity.

Section 7. Transfers.

(A) **General Prohibition.** Except as specifically provided herein or specifically approved by DRMS, neither Purchaser nor Contractor may directly or indirectly sell, transfer or assign all or any part of its rights or obligations under the contract, or, with respect to Contractor, its ownership interest in Purchaser, provided, however, that Contractor may convey a portion of its ownership interest in Purchaser if, after such conveyance, Contractor retains control over and a majority (51%) ownership interest in Purchaser. For purposes of the general prohibition set forth in this Section 7(A), the sale or transfer by Contractor of any voting stock of any corporation that directly or indirectly owns any interest in Purchaser or the transfer by Contractor of any partnership interest in any general or limited partnership that directly or indirectly owns any interest in Purchaser shall constitute an assignment or transfer of an interest in Purchaser within the meaning of this Section 7(A).

(B) **Attempted Transfer.** Any attempted transfer in violation of the provisions of this Article shall be null and void, ab initio.

Section 8. Contract of Sale. This contract is an agreement for the proceeds-sharing sale of the Property by DRMS as seller to Purchaser as buyer. Contractor and DRMS expressly disavow the creation of any other relationship, including without limitation principal-agent, master-servant, employer-employee, general or limited partnership, or joint venture, between DRMS and either Contractor or Purchaser.

Section 9. Execution by Purchaser. Within fifteen (15) Days of the date of award, Contractor shall cause Purchaser's Chief Executive Officer to execute on behalf of Purchaser and deliver to DRMS the Confirmation of Purchaser as Co-Signatory and Co-Obligor, the form of which is attached as Attachment VII.1.9. Notwithstanding the failure to deliver or delay in delivering such properly executed document to DRMS, Purchaser shall be deemed to be a co-signatory and co-obligor with Contractor with respect to this contract effective from the date of award and Purchaser and Contractor shall be jointly and severally liable for the performance of their respective obligations under this contract.

ARTICLE TWO. PERFORMANCE PERIOD; EARLY CANCELLATION OPTION

Section 1. Performance Period. Subject to the early cancellation option provisions of Section 2 of this Article 2, the Government shall provide the Property for a sixty (60) month period (the "Performance Period") from the date of award.

Section 2. Early Cancellation Option.

(A) Beginning with the fourth (4th) Quarterly Report and in each Quarterly Report thereafter, Purchaser shall calculate and report the Performance Ratio with respect to the preceding four (4) calendar quarter period.

(B) The "Performance Ratio" equals Net Proceeds obtained by Purchaser during such period, divided by the total Acquisition Value of all Property sold by Purchaser during the period.

(C) The "Cancellation Trigger" shall be:

(1) 0.70% if the then most recently available Pricing Adjustment Ratio is 0.90% or greater; or

(2) 0.70% multiplied by the then most recently available Pricing Adjustment Ratio if the then most recently available Pricing Adjustment Ratio is less than 0.90%.

(D) If the Performance Ratio for each of two (2) consecutive calendar quarters is less than the respective Cancellation Trigger for each such calendar quarter, either DRMS or Contractor may in its sole discretion cause Termination by notice served within thirty (30) Days of the delivery to DRMS of the second such Quarterly Report and effective five (5) Days after the date of service of the notice.

ARTICLE THREE. REFERRAL AND REMOVAL OR ABANDONMENT OF PROPERTY; RCP AND SPECIAL SITUATION PROPERTY; TITLE TO PROPERTY; RISK OF LOSS

Section 1. Property Referral List. Twice per calendar month, on the 1st and 15th Day of the month, the Government will furnish a consolidated list (the "Property Referral List") of Property to be delivered under the contract as provided in Article 4. Purchaser will not be charged for items not available for removal. Purchaser will be required to pay Purchaser's twenty percent (20%) share of the Purchase Price for all items available for removal. The Purchase Price is based on the Government established replacement value (the "Acquisition Value") of each particular item of Property. The Acquisition Value is based on Government data and is not subject to dispute other than as provided in Article 6. Delivery of the initial Property Referral List after award of the contract, and Purchaser's initial removal of Property, shall be governed by the provisions of Sections 8 and 9 below of this Article 3.

Section 2. Removal. Purchaser must remove particular items of Property within fifteen (15) Days of the written request therefor by the Sales Contracting Officer, provided, however, that such request shall not require removal before the date that is forty-five (45) Days after the submission of the corresponding Property Referral List to Purchaser. Purchaser shall pay to DRMS a storage fee of five cents (\$0.05) per square foot per month for any Property not removed from a DRMO within forty-five (45) Days of submission of the corresponding Property

Referral List. Purchaser must give at least twenty-four (24) hours notice to the management of the affected DRMO prior to each removal.

Section 3. Recycling Control Point (RCP) Property. At the Government's option, property located at a Defense Logistics Agency (DLA) depot may be shipped directly to Purchaser by the Government. Purchaser shall be assessed shipping fees at the following rates: Five dollars (\$5.00) per Line Item for Line Items with a Purchase Price that is less than three hundred dollars (\$300.00), and \$50.00 per Line Item for Line Items with a Purchase Price of three hundred dollars (\$300.00) or more. A "Line Item" is defined as an item or items of Property turned in to DRMS that is or are identified on the Property Referral List with a single DTID.

Section 4. Special Situation Property. The opportunity may arise to receive Property in-place at a Government facility other than a DRMO. In those instances, Purchaser may have the opportunity to de-install such Property. Purchaser shall comply with the requests of the generator of Property made available in-place with respect to storage and removal. Purchaser shall pay any storage charges assessed for in-place Property.

Section 5. Title. Title to the Property shall vest in Purchaser upon removal of the Property. If Purchaser makes a determination under Section 6 below to choose to abandon all rights to any Property, the Government will retain the payment for such items. With respect to Property that is not abandoned, any subsequent resale transactions are between Purchaser and the resale buyers, not between the Government and the resale buyers. Any disputes or claims resulting from such transactions are between Purchaser and resale buyers, not the Government.

Section 6. Abandonment. Purchaser has the option to abandon all rights to any Property included on a Property Referral List and not be required to effect removal. Abandonment does not relieve Purchaser of the responsibility for payment of Purchaser's twenty percent (20%) share of the Purchase Price as provided in Article 5. Such determination to abandon Property must be made in writing to the Sales Contracting Officer as soon as possible but not later than forty-five (45) Days from submission of the corresponding Property Referral List.

Section 7. Risk of Loss. Contractor is specifically referred to the Sale by Reference provisions, Part 2, Condition 14. In addition to the terms and conditions contained therein, Purchaser bears the risk for loss, theft, destruction, or damage to Property once removal has been effected. For that Property for which Purchaser bears the risk of loss, Purchaser is obligated to pay the Government the full Purchase Price for any and all Property that is lost, stolen, destroyed or damaged. The Government reserves the right to apply the Payment Deposit or Retention Fund to cover losses under this Article.

Section 8. Initial Property Referral List. DRMS shall deliver the initial Property Referral List to Purchaser within ten (10) Days of DRMS having received and, as required in certain respects by the provisions of this contract, having approved, all of the materials and information required to be provided to DRMS under the provisions hereof. Such provisions include but are not necessarily limited to the provisions of Article 1 (Purchaser Information and Confirmation of Purchaser as Co-Signatory and Co-Obligor), Article 5 (Pre-Payment), Article 11 (evidence of required insurance coverages), and Article 20 (designation of Contractor's Appointed Arbitrator).

Section 9. Initial Removal of Property. Purchaser shall not remove any of the Property until delivery by DRMS of the initial Property Referral List.

ARTICLE FOUR. PURCHASER ACCESS TO OA/HP AND MIDAS INVENTORY CONTROL SYSTEMS; PROPERTY REFERRAL LIST

Section 1. Access Requirements. Purchaser personnel shall be provided access to the DRMS OA/HP and MIDAS inventory control computer systems and FedLog, provided, however, that they meet the investigative requirements for access set forth in the following regulatory guidance:

(A) DoD Regulation 5200.17, Security Requirements for Automated and Telecommunication Systems, 9 June 1993.

(B) DoD Regulation 5200.2-R, Personnel Security Program, January 1987.

(C) DLA Regulation 5200.11, The DLA Personnel Security Program, 9 December 1988.

Section 2. Background Investigation. Purchaser personnel who request access to the OA/HP and MIDAS systems are required to submit a request for access and undergo a background security investigation. Immediately upon successful completion of the investigation, Purchaser personnel shall be granted access to the OA/HP and MIDAS systems. DRMS shall provide Purchaser with access, subject to the successful completion of the security investigation, for up to three (3) persons who will receive unique user IDs and passwords to allow them entry into the OA/HP and MIDAS systems. Additionally, DRMS shall provide training, system documentation, user manuals, and references as reasonably requested by Purchaser to allow Purchaser's personnel to conduct queries, retrieve regular reports, and determine the meaning of coded information (DEMIL codes, DODAACs, condition codes, etc.).

Section 3. Property Referral List. Twice monthly, on approximately the first (1st) and fifteenth (15th) Days of each calendar month, DRMS shall provide to Purchaser, in writing and in machine readable, spreadsheet file format (*.xls), the following information for each Line Item of Property being referred for sale under this contract (the "Property Referral List") since the immediately preceding Property Referral List:

(A) **Disposal Turn In Document (DTID) [DTID_NO].** The DTID is a fifteen (15) character unique code assigned to each turn-in transaction from the generator to DRMS. The DTID, commonly referred to as a Line Item, may be assigned to a single object or a group of objects that are not necessarily identical.

(B) **National Stock Number / Local Stock Number (NSN/LSN).** The NSN/LSN is a thirteen (13) character code that combines two data fields:

(1) **FSC [FSC].** The FSC is a four (4) digit number that identifies a Federal Supply Classification.

(2) **National Item Identification Number [NIIN].** The NIIN is a nine (9) digit sequence number assigned to a specific type of Property belonging to the FSC or National Item Identification Number Local Stock Number [NIIN_LSN]. Sometimes a nine (9) character field is provided when the NIIN cannot be determined that is often a word describing the item.

(C) **Additional NSN Data [ADD_DATA]**. Add Data is a two (2) character field that indicates if the NSN is an end item as opposed to a component. Additionally, if a # sign is found in this field, it indicates that one or more of the DEMIL Code, item unit price, item name, or item unit of issue were entered by an operator and not downloaded from the Department of Defense master catalog called the Total Item Record (TIR).

(D) **Inventory Item Name [INV_ITM_NAME]**. This twenty-nine (29) character field provides the official name assigned to the Property by the Department of Defense, e.g. "Computer, Digital."

(E) **DRMO RIC [DRMO_RIC] and RIC suffix [RIC_SFX]**. Together these three (3) and one (1) character codes provide the physical location of where the turn-in of the Property was processed. Often it represents the physical location of the DRMO where the Property is stored, although some Property is received or processed but not moved from its physical location with the original owner that is within the physical area served by the DRMO.

(F) **DRMO Name [DRMO_NAME]**. This nineteen (19) character field provides the common name of the DRMO represented by the DRMO RIC in (E) above.

(G) **Storage Location Code [STG_LOC_CD]**. This nine (9) character field provides the physical storage location of the Property identified by the DTID. This is a coded field that is unique to the DRMO represented by the DRMO RIC and RIC Suffix. Note that a # sign in the second position of this field represents that the Property is physically located with the generator and not at the DRMO.

(H) **Generator Department of Defense Activity Address Code (DODAAC) [GENRTR_DODAAC]**. This six (6) character code identifies the generator of the Property. This information is only important when the Property has been received-in-place and remains with the generator. By matching the code against a table of DODAACs, Purchaser can determine the approximate physical location of the Property.

(I) **Quantity Available [QTY_AVAIL]**. This nine (9) digit field is the quantity of the Property that is currently available for Purchaser. When this field is less than the quantity received, the difference has been disposed of through other means and is not available.

(J) **Item Unit of Issue [ITM_UI]**. This two (2) character field describes how all quantities are counted. For example: each, box, dozen, hundred count, gross.

(K) **Item Weight [ITM_WT]**. This nine (9) character numeric field provides the weight of one single unit of issue.

(L) **Item Unit Price [ITM_UP]**. This fifteen (15) character numeric field provides the Acquisition Value of one single unit of issue of the NSN. Multiplying by the applicable quantity figure will provide the Acquisition Value of a Line Item.

(M) **End of Screening Date [END_OF_SCRNG_DT]**. This seven (7) character date field is the last date that a piece of Property is available for R/T/D. The next date is the first date that the Property is available to Purchaser.

ARTICLE FIVE. PAYMENT BY PURCHASER FOR PROPERTY

Section 1. Payment Deposit. Contractor shall pay within ten (10) Days of award to DRMS, or as DRMS directs at the time of award, the amount of four-hundred thousand dollars (\$400,000.00) (the "Pre-Payment") by wire transfer. The Government will hold Contractor's Bid Deposit and this Pre-Payment (collectively, the "Payment Deposit") until the completion of the Wind-Up and will use the Payment Deposit to offset any unpaid billings for Property or to offset any other claims by DRMS against Contractor or Purchaser. The Government will return the available balance of the Payment Deposit, without interest thereon, to Contractor at the completion of the Wind-Up as provided in Article 21.

Section 2. Payment by Purchaser for Property.

(A) Invoices and Payments. Within approximately fifteen (15) Days of the submission to Purchaser by DRMS of each twice-monthly Property Referral List, DRMS will submit to Purchaser in writing and in machine readable, spreadsheet file format (*.xls), a billing (each, an "Invoice") for payment for the Property identified on such Property Referral List. The Invoice shall be in the total amount (the "Total Invoiced Amount") of twenty percent (20%) of the Purchase Price of the subject Property, determined by multiplying the Acquisition Value of each Line Item by the corresponding Bid Percentage for the applicable FSC.

(B) Amounts Payable to DRMS and to KGP; Timing of Payments. Each Invoice shall identify **(i)** an amount (the "DRMS Invoiced Amount") equal to ninety-seven and seventy-five one-hundredths percent (97.75%) of the Total Invoiced Amount, and **(ii)** an amount (the "KGP Invoiced Amount") equal to two and twenty-five one-hundredths percent (2.25%) of the Total Invoiced Amount. Purchaser shall pay to DRMS and to KGP the full amounts of the DRMS Invoiced Amount and the KGP Invoiced Amount, respectively, on or before the date that is fifteen (15) Days after each Invoice is submitted to Purchaser.

(C) Failure to Make Timely Payments. With respect to any particular Invoice, should Purchaser fail to pay to DRMS and to KGP the full amounts of the DRMS Invoiced Amount and the KGP Invoiced Amount, respectively, on or before the date that such payments are due, DRMS may, in its sole discretion, **(i)** apply that portion of the Payment Deposit that is necessary to pay the Total Invoiced Amount, in which event DRMS shall pay to KGP the subject KGP Invoiced Amount, and **(ii)** notify Purchaser that such failure constitutes a Material Breach that Purchaser may cure within ten (10) Days of service of notice thereof by paying to DRMS an amount equal to one-hundred twenty percent (120%) of the subject Total Invoiced Amount, which payment shall be applied by DRMS to replenish and increase the amount of the Payment Deposit.

(D) All Payments by Wire Transfer. Other than the Bid Deposit, all payments to DRMS and to KGP, including without limitation Distribution Payments, shall be by wire transfer delivered pursuant to the following instructions, which instructions may be changed by written notice to Purchaser.

(1) Instructions for Wire Transfers to DRMS.
[DRMS to Provide]

(2) Instructions for Wire Transfers to KGP.
[KGP to Provide]

Section 3. Product Quality Pricing Adjustment.

(A) Benchmark ROR. The DRMS "Excluded Products ROR" for the 1996 Fiscal Year, defined as the total of all revenues from the sale by DRMS in Fiscal Year 1996 (1 October through 30 September) of products excluded from the Product Pool and also excluding Scrap, divided by the Acquisition Value of such excluded products, was 2.20% (the "Benchmark ROR"). DRMS will calculate and report to Purchaser the Excluded Products ROR within forty-five (45) Days of the close of the Fiscal Year for 1997 and for each subsequent Fiscal Year throughout the Performance Period.

(B) Pricing Adjustment. If the Excluded Products ROR for any Fiscal Year from 1997 through the end of the Performance Period is less than ninety percent (90%) of the Benchmark ROR (i.e., an Excluded Products ROR less than 1.98%), the Purchase Price of each item of Property for which an Invoice is rendered to Purchaser during the twelve (12) calendar months beginning with the fourth (4th) month following the close of such Fiscal Year shall equal (1) the applicable Bid Percentage, multiplied by (2) the applicable Acquisition Value, multiplied by (3) the ratio (the "Pricing Adjustment Ratio") of (i) such immediately preceding Fiscal Year's Excluded Product ROR divided by (ii) the Benchmark ROR.

(C) DRMS Sales Methods for Excluded Products. The Purchase Price shall be adjusted as provided in this Article 5 notwithstanding future changes, if any, effected by DRMS in its methods of selling products excluded from the Product Pool.

**ARTICLE SIX. QUANTITY DELIVERABLE; DISCREPANCIES AND
ANNUAL PRICING CORRECTION**

Section 1. Sale by Reference Conditions. Sale by Reference Condition D, Adjustment for Variation in Quantity or Weight Special Sealed Bid-Term Conditions (Standard Form 114C-2) is deleted, and Condition No. 12, Adjustment for Variation or Weight (Standard Form 114-C) is modified to authorize the Government to vary the quantity or weight delivered as follows.

Section 2. Discrepancies.

(A) With respect to each discrepancy noted by Purchaser in terms of any item on the Property Referral List that is available for removal, but for which there is an underage or overage in the "Item Weight [ITM_WT]" or the "Quantity Available [QTY_AVAIL]," or product misidentification as described by the "Inventory Item Name [INV_ITM_NAME]" or FSC, or mis-specification of the Acquisition Value, of a Line Item (any such underage, overage, misidentification or mis-specification being a "Discrepancy"), Purchaser shall promptly and prior to removal of the subject Property notify DRMS thereof and document such Discrepancy and such notification. Purchaser shall maintain such documentation as part of Purchaser's Records.

(B) Purchaser shall include with the initial Annual Report, with each Annual Report thereafter, and with the Closing Report, a compilation of all Discrepancies of which DRMS was notified during the period with respect to which such report is

prepared, grouped by the DRMO or other location of the Property subject to each Discrepancy, which compilation includes a complete description of each Discrepancy and a calculation of the effect on Purchaser's twenty percent (20%) share of the Purchase Price of the corresponding Line Item if its Acquisition Value were adjusted up or down accordingly (a "Pricing Correction").

(C) If the sum of the Pricing Corrections for the subject time period (the "Total Pricing Discrepancy") exceeds the amount that is three percent (3%) of the total of the Purchase Prices billed by DRMS to Purchaser with respect to Property sold to Purchaser during such period (the "Pricing Discrepancy Benchmark"), the amount of Purchaser's next payment of an Invoice shall be increased or decreased by the amount of such Total Pricing Discrepancy minus the Pricing Discrepancy Benchmark (the "Annual Pricing Correction"). If there are no more Invoices forthcoming, the next Distributions shall be adjusted for such Annual Pricing Correction.

(D) If the Total Pricing Discrepancy for the subject time period is equal to or less than the Pricing Discrepancy Benchmark, the Annual Pricing Correction for the subject time period shall be zero.

Section 3. Items with Excessive Acquisition Value. Any Line Item with a reported Acquisition Value in excess of ten million dollars (\$10,000,000.00) shall be excluded from this contract. Any such item shall not be made available for purchase or removal by Purchaser and Purchaser shall not be billed therefor.

ARTICLE SEVEN. OPERATIONS

Section 1. Compliance with Applicable Law and Regulations.

(A) **Compliance with Applicable Law.** Contractor, Purchaser and its subcontractors shall comply with the requirements of all applicable federal, state, and local laws, regulations, and ordinances connected with the performance of this contract, including without limitation such requirements pertaining to income and payroll taxes, environmental matters and occupational safety.

(B) **Licenses and Permits.** Purchaser shall obtain any necessary licenses and permits, and comply with all federal, state, and local laws and regulations in connection with the prosecution of the work. The required permits and licenses shall include those required to transport and dispose of hazardous and toxic waste regulated by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, and the Toxic Substance Control Act, 15 U.S.C. Section 2601, if applicable to the Property. This responsibility requirement will be a matter of inquiry during the Sales Contracting Officer's pre-award evaluation of the bidder's capability to perform the contract satisfactorily. It will also be a continuing matter of inquiry by the Sales Contracting Officer during the performance of the contract.

Section 2. Duties of Care and Loyalty.

(A) **Duty of Care.** Neither Contractor nor Purchaser shall cause or permit any action or omission in the course of performing the contract that damages Purchaser and constitutes gross negligence, recklessness or intentional harm.

(B) **Duty of Loyalty.** Contractor and Purchaser shall carry out their responsibilities under the contract with honesty, good faith and fairness toward DRMS.

Section 3. Prohibited Activities. Purchaser shall not undertake the following activities:

(A) Enter into a partnership, joint venture or other arrangement the purpose or effect of which is to engage indirectly in a transaction that would be prohibited by the provisions of this contract if undertaken by Purchaser directly; or

(B) Acquire any asset not related to the management and disposition of the Property or enter into any transaction not related to the management and disposition of the Property.

(C) Engage in any Affiliate Transaction, except for the Affiliate Transactions identified at Schedule VII.7.3(C), which are permissible on the terms and conditions set forth in such Schedule; or

(D) Enter into any transaction (i) other than on an arms-length basis or (ii) with pricing or other terms less favorable to Purchaser than otherwise reasonably obtainable; or

(E) Give any representations or warranties to a resale buyer concerning the condition or quality of an item of Property; or

(F) Sell any item of Property under terms that could obligate Purchaser to reacquire such Property after the Performance Period; or

(G) Enter into contracts or other arrangements without the prior written approval of DRMS that would assign all or substantially all responsibility for and control of performance of the contract to another party or parties; or

(H) File a voluntary petition seeking liquidation, reorganization, arrangement or readjustment, in any form, of its debts under Title 11 of the United States Code (or corresponding provisions of future law) or any other federal or state insolvency law; file an answer consenting to or acquiescing in any such petition; make any assignment for the benefit of Purchaser's creditors; or admit in writing Purchaser's inability to pay its debts as they mature, without the prior written consent of DRMS.

Section 4. Classified and Other Material. Any classified or secret material, radioactive material or munitions, strategic or demilitarization list items found by Contractor, Purchaser or any subcontractor(s) in or among the Property must be immediately returned to Government control as directed by the Sales Contracting Officer at Government expense. Purchaser shall be credited for such expense and for Purchaser's share of the Purchase Price of any such item on an Invoice submitted by the Government in the ordinary course of administering this contract within a reasonable time after the return of such Property. If there are no more Invoices forthcoming, the next Distributions shall be adjusted for such credit.

Section 5. Employee Compensation.

(A) **Base Compensation.** Compensation of Purchaser's employees (including fringe benefits) that is determined on a salaried or hourly basis, and paid in an amount determined without regard for the performance of the employee, or the profitability or other performance of Purchaser or of Contractor ("Base Compensation"), shall be deemed a Direct Cost, provided, however, that no employee's Base Compensation shall be plainly excessive in comparison to the compensation of Contractor's employees when evaluated

with regard for Purchaser's circumstances and such employee's qualifications and responsibilities.

(B) **Bonuses.** Compensation of Purchaser's employees other than Base Compensation, including without limitation, bonuses, is an Indirect Cost and shall be borne solely by Contractor.

Section 6. Employee Expenses and Purchaser's Supplies, Furniture and Equipment.

(A) **Employee Expenses.** If any employee or former employee of Purchaser is hired by an Affiliated Party during the term of such employee's employment with Purchaser or within twelve (12) months following the termination of such employment, Contractor will pay to Purchaser a reasonable pro rata share of such employee's training costs, relocation expenses, and employment agency fees to the extent paid, reimbursed, or otherwise incurred by Purchaser in connection with such employee, provided, however, that no such reimbursement will be required if such employee had been employed by Purchaser continuously for eighteen (18) months or longer after the date of award.

(B) **Supplies, Furniture and Equipment.** Purchaser shall not purchase supplies, furniture or equipment except to the extent that such supplies, furniture or equipment will be used solely by Purchaser, and upon the sale of such furniture or equipment, the proceeds shall be the property of Purchaser. Purchaser shall not sell such supplies, furniture or equipment to an Affiliated Party. During the Wind-Up Purchaser shall sell any remaining supplies, furniture or equipment to a third party or parties.

**ARTICLE EIGHT. PURCHASER'S RECORDS; INSPECTION AND
AUDIT BY GOVERNMENT AND INDEPENDENT
AUDITOR; ACCOUNTING PRINCIPLES AND
REQUIRED REPORTS TO GOVERNMENT**

Section 1. Contractor Records Retention. Contractor shall make available Purchaser's books, records, documents, and other supporting evidence, including without limitation all items required by the provisions of Article 9 (the "Records"), to satisfy contract administration and audit requirements of the Department of Defense and the Comptroller General for three (3) years after the Wind-Up is concluded, or for such period of time as Contractor, for its own purposes, retains its books, records, documents, and other supporting evidence, whichever is longer.

Section 2. Inspection of Records and Workplace by Government. To ensure that the Government has a means to verify accuracy of the Records and inventory, the Government has the right to audit the Records and inventory the Property and to review Purchaser's operations with reasonable advance notice. The audit may consist of a complete or random sample examination. Purchaser must ensure that the Property is readily identifiable as formerly Government property.

Section 3. Records Maintenance. Contractor shall maintain the Records accurately and in a manner that will allow clear and accurate auditing. The Records pertaining to inventory shall contain, at a minimum, the National Stock Number, disposal turn-in document number, quantity, date removed from the Government facility, date sold, sale price, date Purchaser received payment from the resale buyer, name and address of resale buyer, and storage location prior to

resale. A separate inventory list must be maintained for each of Purchaser's storage facilities. The Government reserves the right to request and inspect these documents as it deems necessary with reasonable notice. In the event that Purchaser fails to maintain or provide any of these documents to the Government, the Government may in its sole discretion cause Termination.

Section 4. Contracts with Third Parties. Purchaser shall ensure that all contracts entered into by Purchaser shall expire or shall be terminable by Purchaser within the Performance Period. If Purchaser reasonably anticipates that the annualized cost of payments by Purchaser to a particular third party will exceed one hundred thousand dollars (\$100,000.00), Purchaser shall enter into a written contract with such third party that includes a provision requiring that, during the life of such contract and for a period of three (3) years following final payment under such contract, DRMS or its designated representative shall have access to, and the right to examine and copy, any directly pertinent books, documents, papers, records or other recorded information, and to examine any directly pertinent property within such third party's possession or control, involving transactions related to the contract.

Section 5. Purchaser's Books of Account; Financial Reports. Purchaser shall maintain true and correct books and records of account. The books and records of account shall be maintained on an accrual basis in accordance with Generally Accepted Accounting Principles ("GAAP"), and reports to DRMS and KGP shall consist of the following:

(A) **Monthly Report.** By the fifteenth (15th) Day of each calendar month, Purchaser shall provide, in writing and in machine readable, spreadsheet (*.xls) or, as appropriate, word processing (*.doc) file format, the following information (the "Monthly Report") to DRMS and to KGP with respect to the preceding calendar month:

- (1) An updated "Inventory Status Report" that includes the following:
 - a. Cost of capital improvements made to the Property (or attributed to the Property by proration only when necessary).
 - b. Amounts and date(s) of all revenues received (or attributed by proration only when necessary) with respect to the Property.
 - c. Inventory on hand at the close of the month.
- (2) Gross Proceeds and Direct Costs.
- (3) ECLR Statement.
- (4) Detail and summary of:
 - a. Distributions
 - b. Direct Cost Advances and repayments thereof, and the Direct Cost Advance Balance
 - c. Purchase Advances and Purchase Transfers.
- (5) Status of outstanding permits/licenses required for performance of contract and indication of whether existing permits/licenses are due to expire within ninety (90) Days.
- (6) Status report of progress in correcting any deficiencies identified by a DRMS inspection,

regulatory inspection, Financial Audit or Compliance Review or Further Review, which must include Purchaser's plan to comply with discrepancies noted or questions asked in writing by the Sales Contracting Officer, Independent Auditor or Compliance Review Firm.

(B) **Quarterly Report.** Purchaser shall provide to DRMS and to KGP the following quarterly financial information (the "Quarterly Report"), in writing and in machine readable, spreadsheet (*.xls) or, as appropriate, word processing (*.doc) file format, and prepared in accordance with GAAP, within forty-five (45) Days of the close of each calendar quarter with respect to such calendar quarter, provided, however, that the initial Quarterly Report shall pertain to the period from the date of award through 31 December 1997:

- (1) Income statement
- (2) Balance sheet
- (3) Statement of cashflows
- (4) Notes to financial statements
- (5) Inventory status and disposition report
- (6) Detail and summary of:
 - a. Distributions
 - b. Direct Cost Advances and repayments thereof, and the Direct Cost Advance Balance
 - c. Purchase Advances and Purchase Transfers
- (7) ECLR Statement

(C) **Annual Report.** Purchaser shall provide to DRMS and to KGP the following annual financial information (the "Annual Report"), in writing and in machine readable, spreadsheet (*.xls) or, as appropriate, word processing (*.doc) file format, prepared in accordance with GAAP and audited by an independent national accounting firm (the "Independent Auditor") pursuant to American Institute of Certified Public Accountants ("AICPA") standards, within one hundred twenty (120) Days of the close of each twelve (12) calendar month period with respect to such period, provided, however, that the initial Annual Report shall pertain to the period from the date of award through 30 September 1998:

- (1) Income statement
- (2) Balance sheet

- (3) Statement of cashflows
- (4) Notes to financial statements
- (5) Inventory status and disposition report
- (6) Detail and summary of:
 - a. Distributions
 - b. Direct Cost Advances and repayments thereof, and the Direct Cost Advance Balance
 - c. Purchase Advances and Purchase Transfers
- (7) ECLR Statement
- (8) The Independent Auditor's (i) Management Letter and (ii) list of Audit Adjustments whether posted to the Records or not
- (9) As soon as available, but no later than the last day permitted by law, Federal tax returns and all supporting schedules

(D) **Closing Report.** Purchaser shall provide to DRMS and to KGP the following financial information (the "Closing Report"), in writing and in machine readable, spreadsheet file (*.xls) or, as appropriate, word processing (*.doc) format, prepared in accordance with GAAP and audited by the Independent Auditor pursuant to AICPA standards, with respect to the period since the then most recently filed Annual Report:

- (1) Income statement
- (2) Balance sheet
- (3) Statement of cashflows
- (4) Notes to financial statements
- (5) Inventory status and disposition report
- (6) Detail and summary of:
 - a. Distributions
 - b. Direct Cost Advances and repayments thereof, and the Direct Cost Advance Balance
 - c. Purchase Advances and Purchase Transfers
- (7) ECLR Statement
- (8) The Independent Auditor's (i) Management Letter and (ii) list of Audit Adjustments whether posted to the Records or not

(9) As soon as available, but no later than the last day permitted by law, closing Federal tax returns and all supporting schedules

ARTICLE NINE. DIRECT COSTS

Section 1. Definition of Direct Costs. Except as otherwise provided herein, "Direct Costs" are all costs other than (i) amounts paid to DRMS and KGP for the purchase of Property, and (ii) compensation and transportation expenses of Purchaser's Chief Executive Officer, that are actually incurred by Purchaser for the sole purpose of performing this contract, including without limitation costs incurred for the management, storage, marketing, preservation, improvement, transportation and disposition of the Property (including all costs commonly termed "overhead costs") and either (x) paid to any Person that is not an Affiliated Party or (y) paid to an Affiliated Party and constituting one of the "Permitted Affiliate Transactions" identified at Schedule VII.7.3(C).

Section 2. Documentation and Payment of Direct Costs.

(A) **Disbursements.** Purchaser shall make all disbursements from the Operating Account. Disbursements for Direct Costs shall be made pursuant to the provisions of Article 13; disbursements for Distributions and other adjustments shall be made pursuant to the provisions of Article 16; disbursements for repayment of Direct Cost Advances shall be made pursuant to the provisions of Article 13; and Purchase Transfers shall be made pursuant to the provisions of Article 14.

(B) **Supporting Documentation.** Subject to subsection (C) of this Article 9, each disbursement from the Operating Account for a Direct Cost shall be supported in the Records by bona fide documentation (including, if appropriate, records in an electronic or magnetic medium) that adequately demonstrates that each such disbursement is in the proper amount for goods or services actually provided in advance of such disbursement if the disbursement is to an Affiliated Party or, if the disbursement is to a third party that is not an Affiliated Party, for goods or services actually provided or to be provided, or costs actually incurred or to be incurred. Purchaser shall place such documentation in

the Records in advance of, or contemporaneously with, each such disbursement.

(C) **Documentation Requirements.** Except in the case of a disbursement in the amount of Fifty Dollars (\$50) or less, the supporting documentation required under this Article 9 shall include, at a minimum, a written invoice or comparable document from the provider that (i) identifies the payee and itemizes each particular invoiced product or service and the provider thereof, if different from the payee; and (ii) states the pricing and relevant terms as to each such product or service. Although the foregoing bona fide documentation shall as a matter of general principle be required for disbursements from the Operating Account, where the amount at issue is less than One Thousand Dollars (\$1,000) and where the documentation is missing or was inadvertently omitted, Purchaser may, in lieu of such documentation, provide a certificate in the Records executed by a Key Person that: (x) identifies the payee and itemizes each particular invoiced product or service and the provider thereof, if different from the payee, and (y) states the pricing and relevant terms as to each such product or service.

(D) **Payment.** Upon placing the documentation and/or certificate required by this Article 9 in the Records, Purchaser shall pay from the Operating Account the proper amount of each Direct Cost.

(E) **Written Certification to DRMS.** Within fifteen (15) Days after the end of each calendar month that is in whole or in part within the Performance Period or the Wind-Up, Purchaser shall provide written certification to DRMS, in the form specified at Attachment VII.9.2(E) and executed by a Key Person, that all disbursements from the Operating Account have complied with the provisions of this contract

(F) **Indirect Costs.** Contractor shall pay from its own funds before imposition of fine or penalty amounts due and payable for Indirect Costs. Contractor shall have no right of reimbursement for, and shall not use the Operating Account for, the payment of costs within the scope of this Section 9(F).

ARTICLE TEN. CONFLICTS OF INTEREST

Section 1. Restriction on Participation. Once Property under this contract is resold by Purchaser, neither Purchaser nor an Affiliated Party shall purchase such items for a period of one year after the completion of the Wind-Up. All resales of Property shall be bona fide, arms-length transactions intended to provide both the Government and Purchaser maximum Net Proceeds. Purchaser may not resell Property directly or indirectly to an Affiliated Party.

Section 2. Benefits to Contractor and Affiliated Parties. Contractor shall assure that neither Contractor nor any Affiliated Party obtains goods, assets, tangible or intangible property or services from third-party vendors to Purchaser at prices or on terms more favorable than those that would otherwise be available to Contractor or the Affiliated Party absent the relationship between Purchaser and such third-party vendors. The foregoing requirement shall not apply to benefits from volume purchasing of goods, assets, tangible or intangible property or services by Contractor, Affiliated Parties and Purchaser where such volume purchasing does not benefit one purchasing party over another.

ARTICLE ELEVEN. FIDELITY BOND REQUIREMENTS; INSURANCE

Section 1. Modification of Special Circumstance Conditions. Sale by Reference (Attachment VI) Part 5: Additional Special Circumstance Conditions (DRMS Form 86, Oct 93), Article D, Liability and Insurance, paragraphs (a)(2) and (a)(3,) are modified as follows:

(2) Bodily Injury Insurance in an amount of not less than two hundred fifty thousand dollars (\$250,000.00) any one individual and one million dollars (\$1,000,000) any one accident or occurrence.

(3) Property Damage Liability Insurance in the amount of two hundred fifty thousand dollars (\$250,000.00) (which shall include any and all property whether or not in the care, custody or control of Purchaser). The annual coverage shall be not less than one million dollars (\$1,000,000).

Section 2. Further Modifications. Sale by Reference Part 5, Article D, paragraph (a) is also amended as follows:

(4) "All-Risk" coverage for fire and other property perils for all property owned by Purchaser with aggregate coverage of five million dollars (\$5,000,000.00).

(5) Umbrella liability coverage up to two million dollars (\$2,000,000.00).

(6) Fidelity Blanket Bond. Purchaser shall obtain, and maintain at all times until the completion of the Wind-Up, fidelity or blanket bond coverage in the amount of at least five million dollars (\$5,000,000.00) (the "Fidelity Bond"). Purchaser shall obtain and maintain such coverage with a responsible surety company with respect to all of Purchaser's employees, officers and directors to protect Purchaser against losses, including, without limitation, those arising from theft, embezzlement, fraud, or misplacement of funds, money, or documents. The issuer, policy terms and forms and amounts of coverage, including applicable deductibles, shall be satisfactory to DRMS. Purchaser agrees to notify DRMS in writing within five (5) Business Days of the cancellation or termination of any such coverage or of any modification of such coverage. Purchaser further agrees to notify DRMS in writing within five (5) Business Days after filing a claim under such coverage.

(7) Other Insurance. Purchaser shall obtain, and maintain at all times until the completion of the Wind-Up, such comprehensive general liability, automobile liability, umbrella liability, worker's compensation and other insurance coverage as may be required by law. At its option, Purchaser may obtain and maintain such additional insurance, including directors and officers coverage and errors and omissions coverage, as Purchaser deems appropriate.

(8) Costs of Required and Other Coverage. Purchaser shall pay from the Operating Account pursuant to the provisions of Article 13 all premiums and deductibles incurred for all insurance coverage (which shall be deemed to be Direct Costs) except directors and officers coverage and errors and omissions coverage, and such disbursements shall be treated as Direct Costs. Premiums and deductibles for directors and officers coverage and errors and omissions coverage shall be considered an Indirect Cost and such

insurance shall be obtained and maintained at Contractor's sole cost and expense.

(9) Evidence of Insurance. Within thirty (30) Days of the date of award, and annually thereafter, Purchaser shall provide to DRMS copies of policies, certificates of insurance or other proof evidencing the coverages required.

(10) Purchaser must obtain the minimum coverages specified herein unless DRMS approves a variance from such minimum coverages. In the event that a specified coverage or limit is or in the future becomes commercially impractical, such approval shall not be unreasonably withheld.

ARTICLE TWELVE. SOFTWARE AND SYSTEMS

Section 1. Identification of Systems and Software Developed with Contractor Funds.

(A) All accounting or reporting systems (other than hardware and other equipment) or software (and all related User Documentation relating to such systems and software) owned by Contractor, or otherwise obtained or developed by Contractor solely at Contractor's expense, excluding Third-Party Software, that Contractor or Purchaser uses in the performance of this Contract (collectively, "Contractor Systems and Software") shall be the sole property of Contractor until completion of the Wind-Up and thereafter.

Schedule VII.12.1(A) identifies all Contractor Systems and Software that Contractor anticipates being used in the performance of this contract. From the date of award until completion of the Wind-Up, Contractor or Purchaser shall update Schedule VII.12.1(A) to the extent necessary to reflect the use of Contractor Systems and Software accurately and shall quarterly inform DRMS in writing of any changes to Schedule VII.12.1(A).

(B) Contractor may use, license, sublicense, assign, transfer or otherwise market Contractor Systems and Software to any other Person (including without limitation to any Affiliated Party) without DRMS's consent. Such use or marketing of Contractor Systems and Software shall be made upon such terms and conditions as Contractor may determine in its sole discretion and without compensation to Purchaser

or to DRMS, provided, however, that such terms and conditions shall not prejudice DRMS's rights to use Contractor Systems and Software as set forth in Section 2 below.

Section 2. License in Contractor Systems and Software.

(A) DRMS shall have a non-exclusive, irrevocable and unconditional license, until the completion of the Wind-Up and for a period of three (3) years thereafter, and without additional cost to DRMS (except as otherwise provided herein), and a right to have delivered to it for DRMS and its designated representatives to use, solely on DRMS's own behalf in managing any Remaining Assets and in reviewing Contractor's and Purchaser's performance of their obligations under this contract, any and all Contractor Systems and Software used in the performance of Contractor's and Purchaser's services under this contract; provided, however, that such delivery shall be only in the format and structure that is used by Contractor and/or Purchaser in performing their services under this contract.

(B) Contractor makes no representations, warranties or indemnities with respect to such Contractor Systems and Software, provided, however, that Contractor will use its best efforts to assure that Purchaser's computer data retention and transfer procedures maintain the integrity, reliability and security of the original data. Contractor shall be responsible for training or for conversion or installation of such Contractor Systems and Software to Purchaser's systems or equipment, and shall cause such training, conversion or installation to be performed from time to time as may be reasonably necessary for the effective and efficient operation of Purchaser's business. To the extent that such services are performed by an Affiliated Party, the costs thereof shall be Indirect Costs and borne solely by Contractor. Contractor shall not be responsible for training or for conversion or installation of such Contractor Systems and Software to DRMS's systems or equipment or for any costs or expenses thereof.

(C) Contractor shall not be responsible for maintaining or enhancing Contractor Systems and Software, either before or after completion of the Wind-Up, but Contractor shall cause such maintenance of Contractor

Systems and Software to be performed as may be necessary for the effective and efficient operation of Purchaser's business. To the extent that such maintenance is performed by an Affiliated Party, the costs thereof shall be Indirect Costs borne solely by Contractor. To the extent that Contractor causes enhancements of Contractor Systems and Software to be performed, if Contractor elects to make them at its own expense, they shall be the property of Contractor and shall be subject to the provisions of Section 1 and this Section 2 pertaining to Contractor Systems and Software; if

Contractor elects to make enhancements at Purchaser expense so that they fall within the definition of Purchaser Systems and Software set forth in Section 3, they shall be subject to the provisions of that Section.

Section 3. Systems and Software Developed with Purchaser Funds.

(A) If any accounting or recording systems (other than hardware and equipment) or application software or any other software or documentation are developed for use in connection with Purchaser's business (a) at least thirty percent (30%) at Purchaser expense, or (b) developed at a cost of more than twenty-five thousand dollars (\$25,000.00) to Purchaser (all of which shall constitute "Purchaser Systems and Software"), such Purchaser Systems and Software shall be the sole property of Purchaser until completion of the Wind-Up, and thereafter shall become the property of DRMS. Until the completion of the Wind-Up, Contractor or Purchaser shall inform DRMS quarterly in writing of any Purchaser Systems and Software developed during such quarter.

(B) Contractor shall have a non-exclusive, irrevocable and unconditional license, until the completion of the Wind-Up and for a period of ten (10) years thereafter, and without additional cost to Contractor, and a right to have delivered to it, to use, sublicense, transfer or otherwise market Purchaser Systems and Software, provided, however, that Contractor may sublicense, transfer or otherwise market Purchaser Systems and Software only with the prior written consent of, and on terms agreed to by, DRMS in the exercise of its sole discretion.

(C) If Purchaser develops any accounting or recording systems (other than hardware and equipment) or application software or any other software or documentation for use in connection with Purchaser's business that do not fall within the definition of Purchaser Systems and Software in this Section 3 ("Other Systems and Software"), such Other Systems and Software shall be the sole property of Contractor. Contractor may use, license, sublicense, assign, transfer or otherwise market Other Systems and Software to any other Person (including, without limitation, to any Affiliated Party) without DRMS's consent. Such use or marketing of Other Systems and Software shall be made upon such terms and conditions as Contractor may determine in its sole discretion and without compensation to Purchaser or to DRMS, provided, however, that such terms and conditions shall not prejudice DRMS's rights to use Contractor Systems and Software as set forth in Section 2, above.

(D) DRMS shall have a non-exclusive, irrevocable and unconditional license, until completion of the Wind-Up and for a period of three (3) years thereafter, and without additional cost to Purchaser or to DRMS (except as otherwise provided herein), and a right to have delivered to it for DRMS and its designated representatives to use, solely on DRMS's own behalf in managing any Remaining Assets and in reviewing Contractor's and Purchaser's performance of their obligations under this contract, Other Systems and Software; provided, however, that such delivery shall be only in the format and structure that is used by Contractor and/or Purchaser in performing their services under this contract.

(E) Contractor makes no representations, warranties, or indemnities with respect to Purchaser Systems and Software or Other Systems and Software, provided, however, that Contractor agrees that it will use its best efforts to assure that computer data retention and transfer procedures maintain the integrity, reliability and security of the original data. Contractor shall not be responsible for maintaining or enhancing Purchaser Systems and Software or Other Systems and Software, either before or after completion of the Wind-Up, but Contractor shall cause such maintenance of Purchaser Systems and Software and Other Systems and Software to be performed until completion of the

Wind-Up as may be reasonably necessary for the effective and efficient operation of Purchaser's business. To the extent that Contractor causes enhancements of Purchaser Systems and Software or Other Systems and Software to be performed at Purchaser's expense, such enhancements shall be the property of Purchaser until completion of the Wind-Up and the property of DRMS thereafter.

Section 4. Third-Party Software. All third party software that Contractor uses in the performance of its services under this contract is referred to herein collectively as "Third-Party Software." Schedule VII.12.4 identifies all Third-Party Software that Contractor anticipates will be used by Purchaser in the performance of its services under this Agreement. Until completion of the Wind-Up, Contractor shall update Schedule VII.12.4 to the extent necessary to reflect its use of Third-Party Software accurately and shall quarterly inform DRMS in writing of any such additions to Schedule VII.12.4. To the extent that Contractor elects to use any Third-Party Software under which it holds a use license on the date of award in connection with Purchaser's business, Contractor shall transfer to Purchaser any such existing use license for such Third-Party Software as soon as possible after the date of award. In addition, it shall use reasonable efforts to obtain, as part of such transfer and at the expense of Purchaser as a Direct Cost, a sublicense for DRMS and its designated representatives to access and use the Third-Party Software. To the extent that Contractor or Purchaser elects to acquire Third-Party Software for use in connection with Purchaser's business following the date of award, Contractor shall, at the expense of Purchaser as a Direct Cost, obtain a use license for such Third-Party Software for Purchaser along with a sublicense for DRMS and its designated representatives to access and use the Third-Party Software.

Section 5. Software Documentation and Maintenance.

(A) Contractor or Purchaser shall retain all user documentation relating to any application or use of any and all accounting or recording systems or software, including without limitation all training manuals used or developed in connection with Contractor's or Purchaser's performance of services under this contract (the "User Documentation"). Contractor or Purchaser shall provide the originals or copies of such User Documentation, along with any updated

non-third party source code with any related narratives, design level documents and schematics to all Contractor Systems and Software, all Other Systems and Software, and all Purchaser Systems and Software, to DRMS upon completion of the Wind-Up at DRMS's request; provided, however, that delivery of such User Documentation, source code and other materials by Contractor to DRMS shall be only in the format and structure that is used by Contractor and/or Purchaser in the performance of services under this Contract.

(B) Contractor makes no representations, warranties, or indemnities with respect to such User Documentation, source code and other materials, provided, however, that Contractor agrees that it will use its best efforts to assure that the User Documentation, source code and other materials will be maintained to ensure the integrity, reliability and security of those items. Contractor shall not be responsible for any training, maintenance or enhancement with respect to such User Documentation, source code or other materials, either before or after completion of the Wind-Up, but Contractor shall cause such maintenance of the User Documentation to be performed until completion of the Wind-Up as may be reasonably necessary for the effective and efficient operation of Purchaser's business. To the extent that such training, maintenance or enhancements are performed by an Affiliated Party, the costs thereof shall be Indirect Costs and borne solely by Contractor. To the extent that Contractor causes enhancements of User Documentation to be undertaken at Purchaser expense as a Direct Cost, such enhancements shall be the property of Purchaser until completion of the Wind-Up and the property of DRMS thereafter.

ARTICLE THIRTEEN. OPERATING ACCOUNT; WORKING CAPITAL

Section 1. Operating Account.

(A) **Establishment.** Within ten (10) Days of the date of award Purchaser shall establish, and shall maintain throughout the Performance Period and for so long as may be necessary during the Wind-Up, a demand deposit account, interest bearing if possible (the "Operating Account"), for the benefit of Purchaser, in such federally insured financial institution as Purchaser may select, provided, however, that such institution shall not be an Affiliated Party.

(B) **Maintenance of Sufficient Funds.** Contractor shall cause Purchaser to maintain sufficient funds in the Operating Account to meet the cash needs of Purchaser for the payment of Direct Costs.

Section 2. Working Capital. If Purchaser determines on any Business Day during the Performance Period or Wind-Up that there is a shortfall in the amount of funds required to meet Purchaser's immediate cash needs for the payment of Direct Costs, Contractor shall transfer a Direct Cost Advance to the Operating Account to the extent necessary to fund such shortfall.

Section 3. Funds in the Operating Account; Treatment of Interest. The funds in the Operating Account, and all interest earned thereon, shall be funds of Purchaser and no funds other than Purchaser funds shall be deposited into such account.

Section 4. Direct Cost Advances. Amounts transferred by Contractor to Purchaser to fund the payment of Direct Costs are "Direct Cost Advances" (the unrepaid balance being the "Direct Cost Advance Balance"). Direct Cost Advances are repayable to Contractor by Purchaser, but without interest thereon, as funds become available to Purchaser and as Contractor shall direct. Repayments of Direct Cost Advances are not Direct Costs, and the Direct Cost Advance Balance is not a Purchaser Liability.

Section 5. Limited Right to Borrow Funds. Other than Direct Cost Advances obtained from Contractor, Purchaser shall not borrow funds for any other purpose or from any party other than Contractor, and Purchaser shall not pledge or grant any security interest in the Property for any purpose whatsoever. Notwithstanding the foregoing, Purchaser shall have the right to accept unsecured short-term trade credit only from suppliers or

vendors to Purchaser, which trade credit is extended in the ordinary course of such suppliers' or vendors' businesses.

Section 6. Deposits to Operating Account.

(A) **Receipts.** No later than the close of business on the next Business Day following the Day of receipt of any funds on behalf of Purchaser, Purchaser shall deposit all such receipts into the Operating Account.

(B) **Direct Cost Advances.** No later than the close of business on the next Business Day following the Day of receipt of funds borrowed in accordance with Section 5 above, Purchaser shall deposit all such funds into the Operating Account.

(C) **Contractor's Responsibility for Funds.** Contractor shall act as a fiduciary to Purchaser with respect to all funds Purchaser receives, holds and/or disburses.

Section 7. Disbursements from Operating Account.

(A) **Costs Payable from Operating Account.** Purchaser shall timely pay from the Operating Account, and in accordance with the requirements of this Article 13, all amounts payable for Direct Costs, which shall be paid in full when goods and services are provided or, in the case of suppliers extending trade credit pursuant to the provisions of Section 5, when invoiced.

(B) **Limitation on Disbursements.** Purchaser shall make no disbursements from the Operating Account except for (i) payment of Distributions and other adjustments pursuant to the provisions of Article 16, (ii) payment of Direct Costs pursuant to the provisions of Article 9 and this Article 13, (iii) repayment of Direct Cost Advances pursuant to the provisions of this Article 13, and (iv) Purchase Transfers pursuant to the provisions of this Article 14. Except as specifically provided in this contract, no other expense shall be paid, money lent or reimbursement made by Purchaser to any party.

(C) **Signatures.** Any payment, including a transfer, from the Operating Account shall require the signature of an employee of Purchaser who is a Key Person. Any payment in excess of twenty-five thousand dollars (\$25,000.00) shall require the signatures of two of Purchaser's employees who

are Key Persons, one of whom must be Purchaser's Chief Executive Officer.

ARTICLE FOURTEEN. PURCHASE ACCOUNT

Section 1. Purchase Account.

(A) **Establishment.** Within ten (10) Days of the date of award Purchaser shall establish, and shall maintain throughout the Performance Period and for so long as may be necessary during the Wind-Up, a demand deposit account, interest bearing if possible (the "Purchase Account") for the benefit of Purchaser, in such federally insured financial institution as Purchaser may select, provided, however, that such institution shall not be an Affiliated Party.

(B) **Maintenance of Sufficient Funds.** Contractor shall cause Purchaser to maintain sufficient funds in the Purchase Account to meet the cash needs of Purchaser for the timely payment of Invoices for the purchase of Property.

Section 2. Purchase Advances. If Purchaser determines on any Business Day during the Performance Period or Wind-Up that Purchaser requires additional funds in the Purchase Account to meet Purchaser's immediate cash needs for the payment of an Invoice, Contractor shall transfer funds to the Purchase Account (each such transfer, a "Purchase Advance") immediately to the extent necessary to fund such shortfall.

Section 3. Funds in the Purchase Account; Treatment of Interest. The funds in the Purchase Account, and all interest earned thereon, shall be funds of Purchaser. Interest earned thereon shall be applied to defray the amounts of Purchase Advances and Purchase Transfers that would otherwise be required.

Section 4. Treatment of Purchase Advances. Purchase Advances shall not be treated as Purchaser Liabilities, and shall not be repaid by Purchaser other than through Contractor Distributions. Purchaser shall not pay to Contractor any interest on Purchase Advances.

Section 5. Disbursements from Purchase Account. Except during the Wind-Up as provided in Article 21, Purchaser shall make no disbursements or transfers from the Purchase Account other than payments to DRMS for Invoices.

Section 6. Purchase Transfers. At each time that a Contractor Distribution is payable, Purchaser shall withhold therefrom and transfer from the Operating Account to the Purchase Account (a "Purchase Transfer") the amount reasonably estimated by Purchaser that, when added to the balance then available in the Purchase Account, will be required during the next succeeding thirty (30) Days for the timely payment of Invoices.

**ARTICLE FIFTEEN. FINANCIAL GUARANTEE BOND; RETENTION FUND;
ESTIMATED CONTINGENT LIABILITIES RESERVE**

Section 1. Election of Contractor to Provide Financial Guarantee Bond in Lieu of Retention. Contractor shall either (i) obtain a performance bond or financial guarantee bond (the "Financial Guarantee Bond") issued within thirty (30) Days of the date of award in favor of DRMS and Purchaser on this contract in the amount of one million dollars (\$1,000,000.00), or (ii) be subject to the withholding of a portion of Contractor Distributions as provided in Section 3 hereof. The purpose of the Financial Guarantee Bond and the Retention Fund shall be to provide a source of payment to DRMS and/or to Purchaser in an amount reasonably sufficient to satisfy the financial obligations of Contractor.

Section 2. Financial Guarantee Bond.

(A) **Surety and Form of Bond.** The Financial Guarantee Bond shall be issued by such surety and in such form that are acceptable to DRMS in the exercise of its sole discretion.

(B) **Issuance and Renewal.** The Financial Guarantee Bond shall be issued and, if applicable, renewed for periods of at least one year, renewable at the sole option of the surety.

(C) **Liability and Release of Surety.** The surety shall be liable to DRMS for damages arising out of a Material Breach by Contractor or Purchaser, and the surety's liability on the Financial Guarantee Bond shall terminate with respect to a particular period of time upon approval by DRMS of Purchaser's Annual Report or, if applicable, the Closing Report, pertaining to such period of time, provided, however, that such approval may be conditioned by DRMS upon the final resolution of claims that may arise or have arisen

out of occurrences specified by DRMS in its notice of such conditional approval, which occurrences fall in whole or in part within such period of time, and the surety shall remain liable until such claims are finally resolved.

Section 3. Retention Fund.

(A) **Establishment of Retention; Retention Rate; Retention Fund; Required Retention Fund Balance.** Except as otherwise provided herein, beginning with the first calendar month following the later of (i) the calendar month with respect to which the cumulative amount of Contractor Distributions exceeds the cumulative amount of Purchase Advances or (ii) if applicable, the calendar month in which the Financial Guarantee Bond lapses or is terminated (the "Retention Trigger Month"), ten percent (10%) (the "Retention Rate") of all Contractor Distributions otherwise payable to Contractor shall be paid to DRMS ("Retention Payments") to hold in a fund (the "Retention Fund").

(1) At the time of award and throughout the Performance Period and Wind-Up except as otherwise provided herein, the target balance for the Retention Fund (the "Required Retention Fund Balance") shall be five hundred thousand dollars (\$500,000.00).

(2) Except as otherwise provided herein, while a Financial Guarantee Bond that complies with the provisions of Sections 1 and 2 above remains in effect, the Retention Rate shall be zero and the Required Retention Fund Balance shall be zero.

(3) Retention Payments shall continue from the Retention Trigger Date until the balance in the Retention Fund equals the amount of the Required Retention Fund Balance.

(B) **Insolvency of Contractor.** If Contractor voluntarily places itself or is involuntarily placed in proceedings under Title 11 of the United States Code (or corresponding provisions of future law) or any other federal or state insolvency law, Contractor shall so notify DRMS and Purchaser within ten (10) Days of the commencement of such proceedings. Effective with the earlier of receipt of such notice or receipt by DRMS of actual knowledge of the commencement of such proceedings, the Required Retention

Fund Balance shall be increased by five-hundred thousand dollars (\$500,000.00) and Purchaser shall thereafter pay to DRMS, in addition to any other payments due to DRMS under the contract, including without limitation Retention Payments, ten percent (10%) of any Contractor Distributions otherwise payable to Contractor ("Contractor Insolvency Retention Payments"). Contractor Insolvency Retention Payments shall be added to the amount of the Retention Fund, and such payments shall continue until the amount in the Retention Fund equals the Required Retention Fund Balance.

(C) **Increased Retention.** If DRMS at any time after the Retention Trigger Month determines that the amount in the Retention Fund will likely not be sufficient to satisfy its purpose, it may submit the issues of the sufficiency of the amount of the Retention Fund or of the Retention Rate to the Dispute Resolution Panel in accordance with the provisions of Article 20 below. The Panel shall determine whether the total amount of the Retention Fund and/or the Retention Rate shall be increased in order to effectuate the purpose of Retention.

(D) **Release of Retention Fund.** The balance in the Retention Fund shall be released to Contractor without interest thereon as provided in Article 21.

Section 4. Estimated Contingent Liabilities Reserve.

Effective as of the date of award, Purchaser shall establish an estimated contingent liabilities reserve account (the "ECLR") on its books of account. The ECLR shall represent an amount reasonably deemed from time to time by Purchaser to be sufficient to satisfy all of Purchaser's contingent, conditional and/or unmatured claims, liabilities and obligations that have not otherwise been accrued in accordance with GAAP. The ECLR shall be carried on the books of Purchaser as a liability, but shall not be included in the computation of Purchaser Liabilities. Purchaser shall maintain the ECLR throughout the Performance Period and Wind-Up until Contractor reasonably determines that all of the contingent, conditional and/or unmatured claims, liabilities and obligations of Purchaser have been satisfied, it being expressly understood that DRMS may submit to the Dispute Resolution Panel in accordance with the provisions of Article 20 a Dispute as to the appropriate duration or amount of the ECLR. So long as Purchaser maintains the ECLR on its books, it shall

include within its Monthly, Quarterly and Annual Reports a written statement (the "ECLR Statement") of the amount of the ECLR and an itemization specifying the contingent, conditional and unmatured claims and obligations of Purchaser that the ECLR is intended to satisfy.

ARTICLE SIXTEEN. DISTRIBUTIONS

Section 1. Preliminary Calculations to Determine Amount, if Any, Available to Be Distributed. Within fifteen (15) Business Days after the last Day of each calendar month that is in whole or in part within the Performance Period and Wind-Up, Purchaser shall prepare and submit to DRMS, KGP and Contractor the "Monthly Distribution Statement" with respect to such month in the form specified at Attachment VII.16.1. Purchaser shall perform the following calculations in preparing the Monthly Distribution Statement:

(A) **Calculate Operating Net Worth.** Purchaser shall calculate the amount of Purchaser's "Operating Net Worth" as of the last Day of the subject month by deducting from the cash balance in the Operating Account (the "Operating Cash Balance") the total of the amounts of (i) the Direct Cost Advance Balance, (ii) Purchaser Liabilities and (iii) the Estimated Contingent Liability Reserve (ECLR).

(B) **Determine Whether the Limitations in Section 2(F) Preclude Making Distributions.** After making the calculations in this Section 1, Purchaser shall determine whether either of the limitations set forth in Section 2(F) below preclude making any Distributions with respect to the subject month.

(C) **Calculate Amount Available for Distributions.** After determining that there are no limitations on making Distributions with respect to the subject month, Purchaser shall determine the amount, if any, that may be distributed.

Section 2. Calculate Distribution Amount. Purchaser shall determine the amount, if any, available to be distributed (the "Distribution Amount"). The Distribution Amount shall equal (i) Purchaser's Operating Net Worth, minus (ii) Purchaser's reasonable estimate of the amount of cash required by Purchaser for the payment of Direct Costs for the next succeeding calendar month following the subject month. Upon determining the

Distribution Amount, Purchaser shall make payments of Distributions (each, a "Distribution Payment"). Purchaser shall make Distribution Payments to DRMS, KGP and Contractor contemporaneously in accordance with the following provisions upon submission of the Monthly Distribution Statement to DRMS, KGP and Contractor:

(A) Calculate Distributions.

(1) Purchaser shall calculate the portion of the Distribution Amount distributable to Contractor by multiplying the Distribution Amount times twenty percent (20%) (the "Contractor Distribution").

(2) Purchaser shall calculate the portion of the Distribution Amount distributable in total to DRMS and to KGP (the "Gross DRMS Distribution") by multiplying the Distribution Amount by eighty percent (80%).

(B) Calculate Net DRMS Distribution and KGP

Distribution.

(1) Purchaser shall calculate the "Net DRMS Distribution" by multiplying the Gross DRMS Distribution times ninety-seven and seventy-five one-hundredths percent (97.75%).

(2) Purchaser shall calculate the "KGP Distribution" by multiplying the Gross DRMS Distribution times two and twenty-five one-hundredths percent (2.25%). The amount of the Distribution Payment to KGP shall equal the amount of the KGP Distribution without additions or deductions.

(C) Calculate Distribution Payments to Contractor and to DRMS.

(1) Purchaser shall deduct from the amount of the Contractor Distribution distributable under Section 2(A)(1) above the amount, if any, payable by Contractor to Purchaser pursuant to Section 2(E) below.

(2) Purchaser shall deduct from the Contractor Distribution and add to the Net DRMS Distribution the amount, if any, of Retention required by the provisions of Article 15.

(3) Purchaser shall deduct from the Contractor Distribution the amount of any Purchase Transfer required by the provisions of Article 14.

(4) Purchaser shall deduct from the Net DRMS Distribution and add to the Contractor Distribution the amount of any credit for overpayments of Invoices owed by DRMS as required by the provisions of Article 6 and Article 7, Section 4.

(D) **Treatment of Distribution Calculations.** The results of the foregoing calculations in Section 2(C) shall determine the amounts of the Distribution Payments to Contractor and to DRMS. Amounts deducted from the Contractor Distribution pursuant to such calculations shall nevertheless be deemed to be distributed to Contractor for the purpose of applying Section 2(F) hereof.

(E) **Adjustments to Distributions.** Any amount that Contractor owes to Purchaser as the result of an undisputed Audit Adjustment, a Decision of the Dispute Resolution Panel, a final judgment or other undisputed obligation in an amount certain, shall be deducted from the amount otherwise distributable to Contractor in any given month.

(F) **Limitation on Distributions.** Purchaser shall not make any Distributions to the extent that, at the time of such payment, after giving effect to such payment:

(1) Purchaser Liabilities shall exceed
Purchaser's Operating Cash Balance, or

(2) Purchaser's Operating Net Worth shall be less
than zero.

ARTICLE SEVENTEEN. COMPLIANCE AND MONITORING

Section 1. Purpose and Content of Compliance Reviews and Further Reviews.

(A) **Compliance Reviews and Further Reviews.** DRMS shall have the right to conduct "Compliance Reviews" of Purchaser in accordance with, and as limited by, the provisions of this Article 17. Acting through an independent private accounting firm (the "Compliance Review Firm"), DRMS may conduct Compliance Reviews, provided, however, that the Sales Contracting Officer and his or her staff may participate therein as the Sales Contracting Officer deems appropriate. DRMS shall also have the right to conduct "Further Reviews" as provided herein. The purpose of such Compliance Reviews and Further Reviews is to determine, after the fact, the extent of Purchaser's compliance with the terms and provisions of the contract and applicable laws and regulations. Such Compliance Reviews and Further Reviews are not intended to provide a mechanism for DRMS participation or involvement in ongoing decisionmaking regarding the affairs of Purchaser.

(B) **Methods.** Compliance Reviews may include, without limitation: (i) examination of the Records, and (ii) personal interviews of persons who may have knowledge of facts regarding Purchaser's compliance with the provisions of this contract, including employees of Purchaser or of any supplier or resale buyer.

Section 2. Procedures for Compliance Reviews.

(A) **Procedures and Notice.** The Compliance Review Firm may conduct Compliance Reviews at its sole discretion at any time during normal business hours and on any Business Day upon reasonable notice. It is expressly agreed that a period of at least fourteen (14) Days shall constitute reasonable notice before a Compliance Review. Purchaser shall permit the Compliance Review Firm to visit and inspect any physical location used by Purchaser, including, without limitation, the inventory (including the Records relating thereto), and to examine the Records, make copies and abstracts therefrom, and discuss the affairs, finances and accounts of Purchaser with any employee, attorney or certified public accountant of Purchaser. The Compliance Review Firm shall endeavor in good faith to conduct its

activities in a manner that does not unduly burden or unreasonably impinge upon the efficient operation of the affairs of Purchaser.

(B) **Scope.** The scope of Compliance Reviews shall be as necessary to confirm Purchaser's and Contractor's compliance with the provisions of the contract.

Section 3. Further Reviews. If the Compliance Review Firm determines that there is a reasonable basis to believe that a default or breach of this contract has occurred, DRMS, upon written notice to Contractor, may conduct any such further investigation that it deems appropriate under the circumstances, using such outside consultants, including attorneys, as it deems necessary or advisable ("Further Review"). Purchaser shall permit such persons as are designated by DRMS to visit and inspect any physical location used by Purchaser, including, without limitation, the inventory (including the Records relating thereto), and to examine the Records, make copies and abstracts therefrom, and discuss the affairs, finances and accounts of Purchaser with any employee, attorney or certified public accountant of Purchaser. Notwithstanding the foregoing, if Contractor gives notice to DRMS stating that a Further Review is not justified, DRMS shall delay the commencement of any such Further Review for a period of fourteen (14) Days after the delivery of its notice thereof to Purchaser to permit Contractor to seek a determination of the appropriateness of the Further Review from the Dispute Resolution Panel.

Section 4. Compliance Notification. After completing the Compliance Review and/or Further Review, DRMS shall notify Contractor in writing of any breach or default identified during the Compliance Review and/or Further Review.

Section 5. Costs of Oversight. Except as provided in Article 20 below, DRMS shall pay all fees, costs and expenses incurred in connection with its Compliance Reviews and Further Reviews.

ARTICLE EIGHTEEN. AUDIT ADJUSTMENTS

Section 1. Notice of Audit Adjustment. If as a result of any examination of the Records, the Compliance Review Firm or Independent Auditor determines that the Records reflect any inaccuracies requiring entry of an adjustment thereto (an "Audit Adjustment"), including, without limitation, the disbursement of any amount from the Operating Account that is inconsistent with any provisions of the contract ("Ineligible Disbursement") or the disposition of an item of Property that is inconsistent with any provision of the contract ("Ineligible Disposition"), the Compliance Review Firm or Independent Auditor shall give written notice thereof to DRMS and Contractor (a "Notice of Audit Adjustment").

Section 2. Procedures for Adjudication of Audit Adjustments. If either Contractor or DRMS disputes an asserted Audit Adjustment, it may submit the dispute to the Dispute Resolution Panel as provided in Article 20. At any time before issuance of a Decision by the Panel, the Parties may compromise the dispute, and such Audit Adjustment shall be deemed confirmed as compromised as of the date of a writing reciting the terms of such compromise and executed on behalf of the parties. If no party submits the dispute to the Dispute Resolution Panel within sixty (60) Days of the Notice of Audit Adjustment, the Audit Adjustment shall be deemed confirmed as asserted.

Section 3. Remedies for Audit Adjustments. Upon confirmation of an Audit Adjustment, (i) Purchaser will pay to the party in question, or the party will pay to Purchaser, as the case may be, the amount required to restore the parties to their respective positions status quo ante, and (ii) Purchaser will correct the Records in accordance with the Audit Adjustment as confirmed. If, as a result of the Audit Adjustment, Contractor is to pay Purchaser or Purchaser is to pay DRMS, each such payment shall include interest thereon calculated at the "Prime Rate" then most recently published in the *Wall Street Journal* plus two hundred (200) basis points.

ARTICLE NINETEEN. MATERIAL BREACH

Section 1. Notice of Material Breach. In the event of a material breach or default ("Material Breach") in the performance of the contract by Purchaser, Contractor or DRMS of their respective duties hereunder, the party asserting such Material Breach (the "Non-Breaching Party") shall serve notice thereof upon the party that committed or is alleged in the notice to have committed such Material Breach (the "Breaching Party").

Section 2. Response to Notice.

(A) **Cure.** Except as otherwise provided herein, the Breaching Party may cure the Material Breach within thirty (30) Days of such notice (the "Cure Period") or within such longer Cure Period as the notice may provide unless, within the Cure Period, the Non-Breaching Party withdraws the notice in writing or extends the Cure Period in writing.

(B) **Submission of Dispute to Dispute Resolution Panel.** Except as otherwise provided herein, the Breaching Party may dispute the asserted Material Breach by presenting such Dispute to the Dispute Resolution Panel as provided in Article 20.

Section 3. Termination. Except as otherwise provided herein, referrals of Property by DRMS for sale to Purchaser hereunder shall terminate (a "Termination") upon expiration of the Cure Period if the Breaching Party fails to cure within the Cure Period or, if the Non-Breaching Party submits the asserted Material Breach to the Dispute Resolution Panel as provided in Article 20 and the Panel issues a Decision confirming the asserted Material Breach, Termination shall be effective upon the date of such Decision. Except as otherwise provided herein, Contractor, Purchaser and DRMS shall continue to perform their respective duties under the contract during the Cure Period and while a Dispute is pending before the Panel.

Section 4. Intentional Breach. An asserted Material Breach comprised of an intentional breach of the Duty of Loyalty or the Duty of Care prescribed in Article 7 (an "Intentional Breach") may not be cured unless DRMS, in its sole discretion, specifies a Cure Period in the notice thereof. Termination shall be effective upon the later of the date of service of such notice or the expiration of the Cure Period, if any, unless Contractor or Purchaser presents a Dispute regarding such asserted Intentional Breach to the Dispute Resolution Panel as

provided in Article 20 within five (5) Days of such notice or within the Cure Period specified in such notice, if any, whichever is longer. If such Dispute is presented to the Panel and the Panel issues a Decision confirming such Intentional Breach, Termination shall be effective upon the date of such Decision.

Section 5. DRMS Remedies for Material Breach by Contractor or Purchaser. If the Breaching Party is Purchaser or Contractor, DRMS may take any one, any combination or all of the following actions to satisfy its claims for any non-payments or other damages:

- (i) Apply the proceeds of the sale of Purchaser's property;
- (ii) Apply the Payment Deposit and/or Retention;
- (iii) Present a claim for indemnity against Contractor as provided in Section 6 below;
- (iv) Present a claim upon the Fidelity or Blanket Bond or any other applicable insurance or surety policy;
- (v) Seek monetary damages, restitution or any other legal or equitable remedy to which it is entitled.

Section 6. Indemnification of DRMS by Contractor and Purchaser. Contractor guarantees that Purchaser will comply fully with the provisions of this contract. If the Breaching Party is Purchaser or Contractor, both Purchaser and Contractor shall indemnify and hold DRMS harmless for all damages arising therefrom.

Section 7. Indemnification of Contractor by DRMS. If the Breaching Party is DRMS, DRMS shall indemnify and hold Contractor harmless for its damages.

ARTICLE TWENTY. DISPUTE RESOLUTION

Section 1. Selection of Dispute Resolution Panel. The Dispute Resolution Panel (the "Panel") shall consist of three (3) persons chosen as follows:

(A) Appointment of Arbitrators. Within thirty (30) Days following the date of award, DRMS and Contractor shall notify the other of its designee to serve as its representative (each, an "Appointed Arbitrator") on the Panel. Within thirty (30) Days thereafter, the two Appointed Arbitrators shall agree to designate a third person (the "Neutral Arbitrator") to serve on the Panel and each party shall provide notice to the other confirming such designation. If the two Appointed Arbitrators cannot agree on the Neutral Arbitrator, either party may submit to the Washington, D.C. office of the American Arbitration Association (the "AAA") a written joint request for the selection of the Neutral Arbitrator pursuant to AAA's Rules for Commercial Arbitration ("AAA Rules").

(B) Service of Arbitrators. DRMS and Contractor each may replace its respective Appointed Arbitrator at any time except during the pendency of a proceeding before the Panel (unless such replacement is necessitated by the death or disability of the Appointed Arbitrator or, in the case of DRMS's Appointed Arbitrator, by reason of job transfer, reassignment or similar circumstance, or in the case of Contractor's Appointed Arbitrator, by reason of termination of employment or resignation by the Appointed Arbitrator). The Neutral Arbitrator shall serve on the Panel for a one year term unless reappointed. At the end of each one-year term, the Appointed Arbitrators may agree either to reappoint the Neutral Arbitrator for another one-year term, or select a replacement as Neutral Arbitrator as provided in Section 1(A) above. If at any time the Neutral Arbitrator becomes unable or unwilling to continue service on the Panel, the parties shall, within thirty (30) Days of receipt of notice thereof from the Neutral Arbitrator (or if the Neutral Arbitrator fails to give such notice, from the Appointed Arbitrators), designate a replacement as provided in Section 1(A) above.

Section 2. Location and Governing Rules. The Panel shall conduct proceedings in Battle Creek, Michigan pursuant to the AAA Rules.

Section 3. Jurisdiction of the Panel.

(A) **Matters Committed to the Panel.** Except as set forth in Section 3(B) below, all Disputes shall be submitted to the Dispute Resolution Panel for mandatory but non-binding arbitration.

(B) **Availability of Judicial Relief.** If either DRMS or Contractor concludes that a Material Breach has occurred, such party may bypass the Panel and seek relief for such Material Breach, including, without limitation, emergency relief, monetary damages, and/or the Wind-Up of Purchaser, from a court of competent jurisdiction. It is expressly provided, however, that the party declaring a Material Breach shall provide the Defaulting Party written notice specifying the facts giving rise to the alleged Material Breach, and, unless otherwise provided herein, the Defaulting Party shall have thirty (30) Days following receipt of such notice in which to cure the Default before the Non-Defaulting Party may seek such judicial relief.

Section 4. Submission of Disputes to the Panel.

(A) **Dispute.** Any dispute, controversy or claim arising under or relating to this contract between the parties, including, but not limited to, a dispute relating to the interpretation of any provision of this contract, a dispute relating to the scope or conduct of Purchaser's or Contractor's duties under this contract, a dispute regarding DRMS's exercise of its oversight powers under Article 17, and a dispute relating to any Audit Adjustment, shall constitute a "Dispute."

(B) **Process.**

(1) **Notice.** Except as to matters explicitly committed to the "discretion" or "option" of a party, as to which such party's exercise of its discretion or option shall not be subject to the following dispute resolution process, if a Dispute arises between the parties, either may serve notice upon the other that it wishes to present the Dispute to the Panel for resolution, provided, however, that no such notice shall be served beyond completion of the Wind-Up.

(2) **Response.** Within fifteen (15) Days after service of a notice, the party upon which it is served shall respond in writing ("Response") describing its position with respect to such matter and designating the attorney(s) or other representative ("Designated Representative") that it has selected to represent it in connection with such matter.

(3) **Negotiation.** Within fifteen (15) Days after service of the Response, the Designated Representatives shall meet and attempt to resolve the matter. Within the same fifteen (15) Day period, the Designated Representatives also shall deliver copies of their respective notices and Responses to each member of the Panel. If the Designated Representatives fail to resolve the dispute within ten (10) Business Days after service of the Response, each party shall within five (5) Business Days so notify the Panel and deliver to the Panel such written information, arguments, documentary evidence, and other written documentation, as it may deem appropriate.

(4) **Request for Immediate Action by the Panel.**

If a party believes that a situation has arisen that requires immediate action by the Panel, any party may serve a notice upon each member of the Panel and upon the other party to request such immediate action.

Section 5. Decision. The Panel shall issue a written decision (the "Decision") endorsed by a majority of the Panel as promptly as possible, but in no event later than forty-five (45) Days after the close of the arbitration hearing for the matter. Within thirty (30) Days of the issuance of a Decision, either party may bring suit in a court of competent jurisdiction under the federal Contract Disputes Act for de novo review to be undertaken without regard for the proceedings before the Panel or for the Decision. Absent such suit, upon the expiration of such thirty (30) Day period the Decision shall be binding on both parties and enforceable by a court of competent jurisdiction. It is not the intent of the parties that such court will engage in de novo review of the underlying matter. Immediately upon expiration of such thirty (30) Day period, Purchaser shall correct the Records as necessary to comply with the Decision, the respective parties shall pay to the other such sums as ordered by

the Decision, and the parties shall cooperate to take all such actions that in other respects may be necessary in the circumstances to comply with the Decision.

Section 6. Remedies Available to Dispute Resolution Panel.

(A) **Remedies in the Case of Disputes.** Upon the request of either party, the Panel may issue a Decision declaring the rights and obligations of the parties with respect to any Dispute submitted to the Panel, or a Decision ordering either party to take any action that the Panel deems appropriate within the scope of the contract, including without limitation payment of damages, or to refrain from taking certain actions specified by the Panel.

In addition, and without limiting the foregoing, the Panel also may issue an order directing any party to comply with the requirements of the contract, including specifying the actions or steps necessary to constitute compliance.

(B) **Remedies for Ineligible Disbursements.** If the Panel confirms a disputed Audit Adjustment arising out of an Ineligible Disbursement, the Panel may order Contractor to pay to Purchaser from Contractor's own funds the amount of any such Ineligible Disbursement.

(C) **Award of Costs.** In addition to the remedies described in Subsections (A) and (B) above, the Panel shall award the reasonable fees, costs and expenses ("Awarded Costs") actually incurred in the prosecution or defense of a Dispute to the prevailing party. Awarded Costs shall be calculated from the commencement of preparation of the notice as defined in Section 4(B) through the conclusion of proceedings before the Panel. Awarded Costs shall not constitute Direct Costs and shall be borne by the non-prevailing party.

Section 7. Effective Date of Confirmation of Resolved Disputes. Disputes that are resolved or confirmed by a Decision shall be deemed confirmed as of the date that is thirty (30) Days after the date of issuance of the relevant Decision.

ARTICLE TWENTY-ONE. WIND-UP OF PURCHASER

Section 1. Wind-Up Commencement Date. Beginning with the date (the "Wind-Up Commencement Date") that is the earlier of (1) the end of the Performance Period or (2) the effective date of Termination by reason of DRMS or Contractor exercising the early cancellation option as provided in Article 2 or by reason of a Material Breach, Purchaser shall be wound up as provided herein.

Section 2. Cessation of Property Referrals. There shall be no further referrals of Property by DRMS for sale to Purchaser from the Wind-Up Commencement Date forward. Submission of Monthly, Quarterly and Annual Reports shall continue as before the Wind-Up Commencement Date until the Wind-Up is completed.

Section 3. Disposition of Remaining Assets. From the Wind-Up Commencement Date forward, disposition of Purchaser's remaining Property and other remaining assets (such Property and other assets remaining as of any particular time from the Wind-Up Commencement Date forward being the "Remaining Assets") shall be conducted as provided in this Section 3.

(A) **Wind-Up upon Termination.** If there is a Termination, Purchaser shall immediately take the following actions unless, in its sole discretion, DRMS exercises the option provided in Section 3(A)(3) below:

(1) Purchaser shall suspend all sales of Property.

(2) Purchaser shall deliver all or part of the Remaining Assets in such manner and to such destinations and recipients as DRMS directs.

(3) Purchaser shall suspend all disbursements from the Operating Account other than as pre-approved by DRMS.

(4) In the exercise of its sole discretion, DRMS may direct Purchaser to sell all or particular items of Purchaser's Remaining Assets in such manner as specified by DRMS.

(B) **Wind-Up at Conclusion of Performance Period.**

If there is no Termination, Purchaser has six (6) months after the conclusion of the Performance Period to effect sale of all Remaining Assets. For any Remaining Assets that have not been sold at the conclusion of this six (6) month period, Purchaser shall conduct a single absolute

auction thereof without reserve prices and shall properly dispose of any Remaining Assets for which no bid is received. Payments of Direct Costs shall continue as before the Wind-Up Commencement Date.

Section 4. Submission and Approval of Closing Report.

Within one hundred twenty (120) Days of Contractor's determination that (i) the sale or other disposition of all of the Remaining Assets has been completed, (ii) all Purchaser Liabilities have been paid in full, (iii) the ECLR has properly been removed from Purchaser's books of account as provided in Article 15, and (iv) all amounts owed to Purchaser have been paid in full, Contractor shall prepare and submit to DRMS and to KGP the Closing Report. Within sixty (60) Days of such submission of the Closing Report or, as the case may be, within sixty (60) Days of the re-submission of a Closing Report initially disapproved by DRMS, DRMS shall either serve notice of its disapproval of the Closing Report and state the reasons therefor, or serve notice of its approval. The Closing Report shall not be deemed final until approved by DRMS, which approval shall not be unreasonably withheld.

Section 5. Final Distributions; Refund of Remaining Balance of Payment Deposit and Remaining Balance of Retention Fund.

(A) Final Distributions; Dissolution of Purchaser.

Upon DRMS approval of the Closing Report, Contractor shall take, or as may be appropriate, Contractor shall cause Purchaser to take, each of the following actions:

(1) **Final Distributions.** Distribute all of Purchaser's remaining cash in the Operating Account in accordance with the provisions of Article 16, and refund to Contractor the remaining cash in the Purchase Account, if any.

(2) **Close Operating Account and Purchase Account.** Close Purchaser's Operating Account and Purchase Account.

(3) **Final Tax Returns.** File closing tax returns and any other documents required by applicable law.

(4) **Dissolution of Purchaser.** File such documents as are necessary to conclude Purchaser's legal existence.

(5) **Documentation Provided to DRMS.** Provide to DRMS copies of all documents evidencing compliance with the provisions of this Article 21.

(B) **Refund of Payment Deposit and Retention Fund.**

Upon receipt by DRMS and KGP of all amounts payable thereto and all documentation to be provided pursuant to the provisions hereof, DRMS shall pay to Contractor the remaining balances, if any, of the Payment Deposit and Retention Fund without interest thereon.

(C) **Early Refund of Retention Fund.** Contractor may obtain payment from DRMS of the balance in the Retention Fund without interest thereon at any time before conclusion of the Wind-Up by providing a Financial Guarantee Bond in the amount of one million dollars (\$1,000,000.00) that is issued for the entirety of the remaining Performance Period, if any, and through the conclusion of the Wind-Up, and that is otherwise acceptable to DRMS in the exercise of its sole discretion.

ARTICLE TWENTY-TWO. MISCELLANEOUS PROVISIONS

Section 1. Binding Effect. Subject to the restrictions on transfers and encumbrances set forth herein, this contract shall inure to the benefit of and be binding upon DRMS, Contractor and Purchaser, and their respective legal representatives, successors and assigns. Whenever this contract refers to any party, such reference shall be deemed to include a reference to the legal representatives, successors and assigns of such party.

Section 2. Notices. All notices, demands, requests, consents, approvals, declarations, reports and other communications required hereunder shall be in writing and addressed as follows, and the same shall be given and shall be deemed to have been served and given if (i) delivered in person with receipt acknowledged, (ii) delivered by registered or certified U.S. mail, return receipt requested, postage prepaid, (iii) deposited into the custody of Federal Express Corporation or other reputable overnight carrier ("Overnight Carrier") for next Business Day delivery, or (iv) telecopied and confirmed by telecopy answerback:

If to DRMS:

Attention:
Telecopy No.

With a copy to:

Kormendi \ Gardner Partners
1025 Connecticut Avenue, N.W.
Suite 308
Washington, D.C. 20036

Attention: Cyrus J. Gardner and Roger C. Kormendi
Telecopy No. (202) 331-1151

and to:

Attention:
Telecopy No.

If to Contractor to:

[CONTRACTOR CONTACT INFORMATION FROM CONTRACTOR'S TECHNICAL
PROPOSAL; MAY BE AMENDED BY CONTRACTOR AFTER AWARD AS PROVIDED
BELOW]

Attention:
Telecopy No.

With a copy to:

Kormendi \ Gardner Partners
1025 Connecticut Avenue, N.W.
Suite 308
Washington, D.C. 20036

Attention: Cyrus J. Gardner and Roger C. Kormendi
Telecopy No. (202) 331-1151

and to:

[TO BE SPECIFIED BY CONTRACTOR AFTER AWARD IF DESIRED BY
CONTRACTOR]

If to Purchaser to:

[PURCHASER CONTACT INFORMATION SUPPLIED BY CONTRACTOR AFTER
AWARD]

Attention:
Telecopy No.

With a copy to:

Kormendi \ Gardner Partners
1025 Connecticut Avenue, N.W.
Suite 308
Washington, D.C. 20036

Attention: Cyrus J. Gardner and Roger C. Kormendi
Telecopy No. (202) 331-1151

and to:

[TO BE PROVIDED BY CONTRACTOR AFTER AWARD IF DESIRED BY
CONTRACTOR]

Attention:
Telecopy No.

or at such other address as may be substituted by giving not fewer than five (5) Business Days advance written notice of such change of address in accordance with the provisions hereof. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Except as otherwise provided in this contract, every notice, demand, request, consent, approval, declaration or other communication provided pursuant to the provisions hereof shall be deemed to have been duly served, delivered and received on the date on which personally delivered with receipt acknowledged or telecopied and confirmed by telecopy answerback, or on the second Business Day after being deposited with an Overnight Carrier, or five (5) Business Days after being deposited in the U.S. mail. Failure or delay in delivering any notice, demand, request, consent, approval, declaration or other communication to a party or to any persons designated above to receive a copy thereof shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

Section 3. Severability. If any provision of this contract or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this contract and the application of such provisions to other Persons or circumstances shall not be affected thereby, and the intent of this contract shall be enforced to the greatest extent permitted by law.

Section 4. Headings. The headings appearing in this contract are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any article or section of this contract.

Section 5. Survival. The rights and obligations of the parties under this contract shall survive for a period of six (6) years after the completion of the Wind-Up.

Section 6. Waiver. No consent or waiver, express or implied, by any party to or of any breach or default by any other party in the performance by such other party of its obligations under this contract shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such other party under this contract. Failure on the part of any party to complain of any act or failure to act by any of the other parties or to declare any of the other parties in default, regardless of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

Section 7. Force Majeure. The parties shall be excused for the period of any delay in the performance of any obligations under this contract when prevented from performing such obligations by cause or causes beyond their reasonable control, including, without limitation, civil commotion, war, invasion, rebellion, hostilities, military or usurped power, sabotage, pestilence, riots, fire or other casualty or acts of God.

Section 8. Use of DRMS Name; Public Communications. Neither Contractor nor Purchaser shall use the name of DRMS or its logos for any marketing or other purposes without the express prior written consent of DRMS, which consent may be withheld for any reason whatsoever and is subject to the sole discretion of DRMS. Neither Contractor nor Purchaser shall publicly denigrate the surplus property disposition program of the U. S. Department of Defense or the conduct thereof by DRMS.

Section 9. Tense and Gender. Unless the context clearly indicates otherwise, the singular shall include the plural and vice versa. Whenever the masculine, feminine or neuter gender is used inappropriately in this contract, this contract shall be read as if the appropriate gender had been used.

Section 10. Entire Agreement; Modification. This contract, and the materials incorporated herein by reference, constitute the entire agreement between the parties regarding the

matters contained in this contract. If there is any inconsistency between the terms of this contract and those of any Appendix, Schedule or Exhibit hereto, the terms of this contract shall govern. There are no promises or other agreements, oral or written, express or implied, between the parties other than as set forth in this contract. No change or modification of, or waiver or compromise under, this contract shall be valid unless it is in writing and signed by a duly authorized representative of the party against which it is to be enforced. Contractor understands and agrees to submit a written request for contract modification to the Sales Contracting Officer prior to effecting any change from that stated in its technical proposal (including any subcontractors identified therein), and/or Sale of Government Property-Item Bid Pages, Sealed Bid, whether occurring before or after the release of the Property. Contractor further agrees not to effect such changes without first receiving the written approval of the Sales Contracting Officer.

Section 11. Computation of Time. In computing any period of time prescribed or allowed by this contract, the Day of the act, event, or default from which the designated period of time begins to run shall not be included. The last Day of the period so computed shall be included unless it is not a Business Day, in which event the period runs until the end of the next Business Day.

ARTICLE TWENTY-THREE. DEFINITIONS AND CROSS-REFERENCES TO DEFINITIONS

AAA Rules: As defined in Article 20.

Acquisition Value: As defined in Article 3.

Affiliate Transaction: Either (1) any sale by or on behalf of Purchaser of goods, assets, property or services to, or purchase by or on behalf of Purchaser of goods, assets, property or services from, an Affiliated Party, including, without limitation, the purchase or sale of, or of any interest in, any of the subject Property, or (2) any transaction on behalf of Purchaser conditioned upon or involving any action or transaction entered into by any Affiliated Party, including, without limitation, a transaction that directly or indirectly benefits an Affiliated Party.

Affiliated Party: (1) Contractor or any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, Contractor or Purchaser; or (2) any Person that is a director, officer, management official, employee, trustee or general partner of, or an owner of an equity interest of one percent (1%) or more or a beneficiary of a trust owning an equity interest of one percent (1%) or more in, Contractor or any other Person specified in clause (1) above. For purposes of this definition, a Person shall be presumed to have control when such Person possesses the power, directly or indirectly, or has the power to direct, or cause the direction of, the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. In addition, and without limiting the foregoing, an employee or subcontractor of Purchaser or Contractor shall be deemed to be an Affiliated Party if he, she or it derives fifty percent (50%) or more of its gross compensation or revenues in any twelve (12) months within the Performance Period or the Wind-Up from Purchaser or from an Affiliated Party.

Annual Pricing Correction: As defined in Article 6.

Annual Report: As defined in Article 8.

Appointed Arbitrator: As defined in Article 20.

Audit Adjustment: As defined in Article 18.

Awarded Costs: As defined in Article 20.

Base Compensation: As defined in Article 7.

Benchmark ROR: As defined in Article 5.

Bid Deposit: As defined in Article 1.

Bid Percentage: The amount, expressed as a percentage of Acquisition Value, offered by Contractor on its Bid Schedule, Attachment III-2, with respect to items of Property in a particular Bid Category.

Breaching Party: As defined in Article 19.

Business Day: Any Day that is not a Saturday, a Sunday or a holiday observed by the federal government.

Cancellation Trigger: As defined in Article 2.

Closing Report: As defined in Article 8.

Compliance Review Firm: As defined in Article 17.

Compliance Review: As defined in Article 17.

Contractor: The bidder that is selected for the award of the contract.

Contractor Distribution: As defined in Article 16.

Contractor Insolvency Retention Payment: As defined in Article 15.

Contractor Systems and Software: As defined in Article 12.

CONUS: Continental United States.

Cure Period: As defined in Article 19.

Day: A calendar day.

Decision: As defined in Article 20.

Designated Representative: As defined in Article 20.

Direct Cost: As defined in Article 9.

Direct Cost Advance: As defined in Article 13.

Direct Cost Advance Balance: As defined in Article 13.

Discrepancy: As defined in Article 6.

Dispute: As defined in Article 20.

Distribution Amount: As defined in Article 16.

DRMS Distribution: As defined in Article 16.

DRMO: Defense Reutilization and Marketing Office.

ECLR: The Estimated Contingent Liabilities Reserve, as defined in Article 15.

Estimated Contingent Liabilities Reserve: As defined in Article 15.

Excluded Products ROR: As defined in Article 5.

Federal Supply Classification: FSC; the federal government's system of identifying and categorizing items of tangible personal property; FSCs that pertain to the Property are set forth at Table IV-1 in Part IV, "Item Description."

Fidelity Bond: As defined in Article 11.

Fiscal Year: For a particular calendar year, the twelve (12) calendar month period concluding on 30 September of such year.

FSC: Federal Supply Classification; FSCs that pertain to the Property are set forth at Table IV-1 in Part IV, "Item Description."

Further Review: As defined in Article 17.

GAAP: As defined in Article 8.

Gross Proceeds: With respect to a particular period of time, all revenues obtained by Purchaser from any source whatsoever excepting (1) Purchase Advances and (2) Direct Cost Advances, but including without limitation all revenues from the

sale or rental of Property, buyers' premiums and insurance proceeds.

Independent Auditor: Independent national accounting firm engaged by Purchaser to audit Purchaser's Records.

Ineligible Disbursement: As defined in Article 18.

Ineligible Disposition: As defined in Article 18.

Indirect Cost: Each cost that is not a Direct Cost.

Inventory Status Report: As defined in Article 8.

Invoice: As defined in Article 5.

Key Person: Each individual who is identified as such in Contractor's technical proposal.

Line Item: As defined in Article 3.

Material Breach: As defined in Article 19.

Monthly Distribution Statement: As defined in Article 16; see Attachment VII.16.1.

Monthly Report: As defined in Article 8.

Net Proceeds: With respect to a particular period of time, the amount of Gross Proceeds less the amount of Direct Costs.

Neutral Arbitrator: As defined in Article 20.

Non-Breaching Party: As defined in Article 19.

Notice of Audit Adjustment: As defined in Article 18.

Operating Account: As defined in Article 13.

Operating Cash Balance: As defined in Article 16.

Operating Net Worth: As defined in Article 16.

Other Systems and Software: As defined in Article 3.

Overnight Carrier: As defined in Article 22.

Panel: As defined in Article 20.

Payment Deposit: As defined in Article 5.

Performance Period: As defined in Article 2.

Performance Ratio: As defined in Article 2.

Permitted Affiliate Transaction: As defined in Article 9; see Schedule VII.7.3(C).

Person: Either (i) an individual, or (2) a business entity of any form of organization whatsoever.

Pre-Payment: As defined in Article 5.

Pricing Correction: As defined in Article 6.

Pricing Discrepancy Benchmark: As defined in Article 6.

Pricing Adjustment Ratio: As defined in Article 5.

Property: All DRMS equipment, supplies, materials and other items with DRMS Demilitarization Code "A" within the FSCs identified in Table IV-1 in Part IV, "Item Description," that

emerge from the DRMS Reutilization/Transfer/Donation process at locations within the Continental United States (CONUS).

Property Referral List: As defined in Article 3.

Purchase Transfer: As defined in Article 14.

Purchase Price: With respect to a particular item of Property, the product of such item's Acquisition Value multiplied by the applicable Bid Percentage.

Purchaser: As defined in Article 1.

Purchaser Liabilities: The total of Purchaser's liabilities that are determined pursuant to GAAP exclusive of unrepaid Direct Cost Advances and Purchase Advances.

Purchaser Systems and Software: As defined in Article 12.

Quarterly Report: As defined in Article 8.

Records: As defined in Article 8.

Remaining Assets: As defined in Article 21.

Required Retention Fund Balance: As defined in Article

15.

Response: As defined in Article 20.

Retention Fund: As defined in Article 15.

Retention Rate: As defined in Article 15.

Retention Trigger Month: As defined in Article 15.

Retention Payment: As defined in Article 15.

Sale by Reference: As defined in Part VI, "Terms and Conditions of Sale;" see Attachment VI.

Sales Contracting Officer: The individual person accepting the bid in whole or in part on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer, including, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of the representative's authority.

Termination: As defined in Article 19.

Third Party Software: As defined in Article 12.

User Documentation: As defined in Article 12.

Wind-Up Commencement Date: As defined in Article 21.

VIII. ATTACHMENTS AND SCHEDULES

ATTACHMENT III - 2
BID SCHEDULE

(to be provided)

ATTACHMENT IV
LOADING LEGEND

(List of DRMOs in Continental U.S.)

ATTACHMENT VI
SALE BY REFERENCE - INSTRUCTIONS, TERMS AND CONDITIONS APPLICABLE
TO DEPARTMENT OF DEFENSE PERSONAL PROPERTY OFFERED FOR SALE BY
DEFENSE REUTILIZATION AND MARKETING SERVICE, MARCH 1994

**ATTACHMENT VII.1.9
CONFIRMATION OF PURCHASER AS
CO-SIGNATORY AND CO-OBLIGOR**

[Name of Purchaser], a [corporation/limited liability company] organized and doing business pursuant to the laws of the state of [state] ("Purchaser"), hereby confirms that it is a co-signatory and co-obligor with [name of Contractor], a [corporation/limited liability company/general partnership/limited partnership/joint venture] organized and doing business pursuant to the laws of the state of [state] ("Contractor"), with respect to DRMS Contract No. [contract number] and all duties, obligations and responsibilities thereunder.

PURCHASER:

Dated: _____

By: _____
[name of Chief Executive Officer],
Chief Executive Officer

SCHEDULE VII.7.3(C)

PERMITTED AFFILIATE TRANSACTIONS

The following are Permitted Affiliate Transactions as such term is used in the contract. Affiliate Transactions that conform to the provisions below are permissible. Payments that are otherwise consistent with the provisions of this contract by Purchaser from the Operating Account to an Affiliated Party in connection with these transactions are permissible and the amounts thereof are Direct Costs, provided, however, that (i) complete documentation of such transactions, including without limitation all supporting compilations, calculations and estimates, are placed in Purchaser's Records pursuant to the provisions of Article 9, and (ii) access is afforded to the Independent Auditor and the Compliance Review Firm to each such Affiliated Party's books and records that are relevant to such transactions.

- 1. Employees of Affiliated Parties.** Purchaser may from time to time engage an employee or employees of an Affiliated Party (other than Purchaser's Chief Executive Officer) to work for Purchaser on a temporary basis, provided, however, that (i) each such temporary engagement is for a minimum of five (5) consecutive Business Days, (ii) for the period of such engagement, such employee works exclusively for Purchaser and performs no services of any character for any Affiliated Party either during or outside of Purchaser's working hours, and (iii) within five (5) business Days of the last Day of each such engagement, each such employee certifies compliance with clause (ii) above with respect to such engagement in the form of Attachment VII.7.3(C)(1). Purchaser may pay reimbursements to such Affiliated Party from the Operating Account for the actual pro rata portion of such employee's Base Compensation attributable to the period of such engagement at the rate of one two-hundred-fortieth (1/240th) of the employee's actual annual Base Compensation paid to such employee by such Affiliated Party for each Business Day for which the employee is engaged by Contractor, and such payments shall be Direct Costs. Such payments may include a surcharge for the applicable employer's share of payroll taxes, but there shall be no surcharge for general, administrative or other expenses.
- 2. Employee Benefits.** Purchaser may obtain from an Affiliated Party the same health and other insurance coverages for Purchaser's employees, including its Chief Executive Officer, as Contractor provides for Contractor's employees. Purchaser may pay reimbursements to such Affiliated Party from the Operating Account for the actual premiums paid for such employees' insurance, but without surcharge for general, administrative or other expenses, and such payments shall be Direct Costs. No other employee benefits may be provided by Purchaser through an Affiliate Transaction without advance written permission from DRMS in response to a written request from Purchaser therefor, which permission may be granted or withheld in the sole discretion of DRMS.

3. **Rented Office Space.** Purchaser's employees may share rented office space with an Affiliated Party. Purchaser may pay reimbursements to such Affiliated Party from the Operating Account for the pro rata share of rent, utilities, taxes, insurance and operating expenses for the square footage of space that is reasonably estimated by Purchaser no less frequently than once each calendar quarter to be actually, exclusively and reasonably used by Purchaser's employees in the performance of this contract, and such payments shall be Direct Costs, provided, however, that any space used by employees of an Affiliated Party while engaged temporarily by Purchaser pursuant to the provisions of para. 1 above shall not be included in such estimate or subject to such reimbursements.

ATTACHMENT VII.7.3(C)(1)
CERTIFICATION BY EMPLOYEE
OF AFFILIATED PARTY

I, [name of employee], am an employee of [name of Affiliated Party employer]. I was assigned to [name of Purchaser] ("Purchaser") for the period beginning on [beginning date] and continuing through [ending date] (a minimum of five (5) consecutive Business Days).

Throughout such time period, I worked exclusively for Purchaser and I performed no services of any character for [name of Affiliated Party employer] either during or outside of Purchaser's working hours.

I certify that the foregoing is true and correct.

Dated:

Signature of Employee: _____
[name of employee]

ATTACHMENT VII.9.2
CERTIFICATION OF DISBURSEMENTS
FROM OPERATING ACCOUNT
[month and year]

I, [name], [title], of [name of Purchaser] ("Purchaser"), hereby certify, to the best of my knowledge and belief upon due inquiry, that all disbursements from Purchaser's Operating Account during [month, year] were solely for purposes that are permissible under the provisions of DRMS Contract No. [number] and that such disbursements fully comply with all such provisions.

Dated: _____

By: _____
[name, title]

SCHEDULE VII. 12. 1(A)
CONTRACTOR SYSTEMS AND SOFTWARE

[TO BE PROVIDED BY CONTRACTOR]

SCHEDULE VII. 12. 4
THIRD PARTY SOFTWARE

[TO BE PROVIDED BY CONTRACTOR]

ATTACHMENT VII.16.1
MONTHLY DISTRIBUTION STATEMENT
[MONTH, YEAR]

1(A). Calculate Operating Net Worth

	Operating Cash Balance	_____
Minus	Direct Cost Advance Balance	_____
Minus	Purchaser Liabilities	_____
Minus	ECLR	_____
Equals	Operating Net Worth	=====

**1(B). Do the limitations in Article 16, Section 2(F),
preclude making Distributions?**

YES_____ NO_____

2. Calculate Distribution Amount

	Operating Net Worth	_____
Minus	Purchaser's reasonable estimate of the amount of cash required by Purchaser for the payment of Direct Costs for the next succeeding calendar month following the subject month	_____
Equals	Distribution Amount	=====

2(A). Calculate Distributions

2(A)(1).	Distribution Amount	_____
Multiplied by	x 20%	
Equals	Contractor Distribution	=====

2(A)(2).	Distribution Amount	_____
Multiplied by	x 80%	
Equals	Gross DRMS Distribution	=====

2(B). Calculate Net DRMS Distribution and KGP Distribution

2(B)(1).	Gross DRMS Distribution	_____
Multiplied by	x 97.75%	
Equals	Net DRMS Distribution	=====

2(B)(2).	Gross DRMS Distribution	_____
Multiplied by		x .25%
Equals	KGP Distribution and equals Distribution Payment to KGP	_____

2(C). Calculate Distribution Payments to Contractor and to DRMS

2(C)(1).	Contractor Distribution	_____
Minus	Amounts payable by Contractor to Purchaser	_____
Minus	Retention	_____
Minus	Purchase Transfer	_____
Plus	Credit for Overpayment of Invoices	_____
Equals	Distribution Payment to Contractor	_____

2(C)(2).	Net DRMS Distribution	_____
Plus	Retention	_____
Minus	Debit for Overpayment of Invoices	_____
Equals	Distribution Payment to DRMS	_____

